

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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:  
:  
In re: :

COLDWATER CREEK INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 14-10867 (BLS)

(Jointly Administered)  
:  
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MODIFIED THIRD AMENDED JOINT PLAN OF LIQUIDATION OF COLDWATER  
CREEK INC. AND ITS DEBTOR AFFILIATES PURSUANT  
TO CHAPTER 11 OF THE BANKRUPTCY CODE

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Dated: September 15, 2014

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<sup>1</sup> The Debtors in these proceedings (including the last four digits of their respective taxpayer identification numbers) are: Coldwater Creek Inc. (9266), Coldwater Creek U.S. Inc. (8831), Aspenwood Advertising, Inc. (7427), Coldwater Creek The Spa Inc. (7592), CWC Rewards Inc. (5382), Coldwater Creek Merchandising & Logistics Inc. (3904) and Coldwater Creek Sourcing Inc. (8530). Debtor CWC Sourcing LLC has the following Idaho organizational identification number: W38677. The Debtors' corporate headquarters is located at One Coldwater Creek Drive, Sandpoint, Idaho 83864.

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## INTRODUCTION

Coldwater Creek Inc. and its debtor affiliates, as debtors and debtors in possession, propose this joint plan of liquidation<sup>2</sup> pursuant to chapter 11 of the Bankruptcy Code. This Plan constitutes a single chapter 11 plan for all of the Debtors and the classifications and treatment of Claims and Interests herein apply to all of the Debtors. Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, this Plan incorporates a proposed compromise and settlement of potential litigation regarding certain issues, including, without limitation, the substantive consolidation of the Debtors' estates for the purposes set forth herein and the resolution of outstanding Claims against, and Interests in, the Debtors. The classifications of Claims and Interests set forth in Article III hereof shall be deemed to apply to all Debtors, unless otherwise specified.

This Plan provides for the liquidation and conversion of all of the Debtors' remaining assets to Cash and the Distribution of the net proceeds realized therefrom to creditors holding Allowed Claims in accordance with the relative priorities established in the Bankruptcy Code. This Plan contemplates the formation of a Liquidating Trust and the appointment of a Liquidating Trustee to, among other things, resolve Disputed Claims, implement the terms of this Plan and make Distributions in accordance with this Plan.

Holders of Claims and Interests should refer to the Disclosure Statement for a discussion of the Debtors' history, businesses, assets, results of operations and historical financial information, as well as a summary and description of this Plan.

## ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME AND GOVERNING LAW

### A. *Defined Terms*

As used in this Plan, capitalized terms have the meanings ascribed to them below.

1. “**ABL Agent**” means Wells Fargo Bank, National Association, in its respective capacities as administrative agent and collateral agent under the ABL Credit Agreement.

2. “**ABL Claim**” means the Secured Claim derived from, based upon, relating to or arising from the ABL Credit Agreement.

3. “**ABL Credit Agreement**” means that certain Amended and Restated Senior Secured Credit Agreement dated as of May 16, 2011, as amended by that certain First Amendment to Amended and Restated Credit Agreement dated as of July 9, 2012 by and among Coldwater Creek U.S. Inc., as lead borrower, the other borrowers thereto, the guarantors party thereto, the lenders party thereto and the ABL Agent.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in Article I.A.

4. “**ABL Lender**” means Wells Fargo Bank, National Association, in its capacity as lender under the ABL Credit Agreement.

5. “**Administrative Claim**” means any Claim for costs and expenses of administration pursuant to sections 503(b), 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtors; (b) all fees and charges assessed against the Estates pursuant to section 1930 of chapter 123 of the Judicial Code; (c) all Fee Claims; (d) all requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to sections 503(b)(3), (4) and (5) of the Bankruptcy Code; and (e) all Section 503(b)(9) Claims.

6. “**Administrative Claims Bar Date**” means the date by which all requests for payment of Administrative Claims (excluding Fee Claims and Section 503(b)(9) Claims) must be Filed and served on the Liquidating Trustee pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order, which date shall be 30 days after the Effective Date.

7. “**Affiliate**” has the meaning set forth in section 101(2) of the Bankruptcy Code.

8. “**Agency Agreement**” means that certain Amended and Restated Agency Agreement between the Debtors and the GOB Agent dated as of May 2, 2014 and entered into in accordance with the Store Closing Approval Order.

9. “**Allowed**” means with respect to any Claim, except as otherwise provided herein: (a) a Claim that is scheduled by the Debtors as neither disputed, contingent nor unliquidated and for which no Proof of Claim, objection or request for estimation has been timely Filed on or before any applicable objection deadline (including the Claims Objection Deadline), if any, set by the Bankruptcy Court or the expiration of such other applicable period fixed by the Bankruptcy Court; (b) a Claim that is not a Disputed Claim on or before the Claims Objection Deadline (as the same may be extended from time to time) or has been allowed by a Final Order; (c) a Claim that has been estimated by the Bankruptcy Court for purposes of allowance in accordance with section 502(c) of the Bankruptcy Code; (d) a Claim that is allowed (i) pursuant to the terms of this Plan, (ii) in any stipulation that is approved by the Bankruptcy Court or (iii) pursuant to any contract, instrument, indenture or other agreement entered into or assumed in connection herewith; (e) a Claim that is allowed by the Liquidating Trustee in its reasonable discretion consistent with its authority set forth in this Plan; or (f) any Claim that is compromised, settled or otherwise resolved pursuant to the authority granted to the Debtors or the Liquidating Trustee, as the case may be, or pursuant to a Final Order of the Bankruptcy Court; *provided, however*, that Claims allowed solely for the purpose of voting to accept or reject this Plan pursuant to an order of the Bankruptcy Court shall not be considered “Allowed Claims” hereunder. Except for any Claim that is expressly Allowed herein, any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated or disputed and for which no Proof of Claim has been Filed is not considered Allowed and shall be deemed disallowed upon the later of entry of the Confirmation Order or the applicable Claims Bar Date.

10. “**Aspenwood**” means Aspenwood Advertising, Inc., a Debtor.

11. “**Assumed Executory Contract and Unexpired Lease List**” means the list (as may be amended), if any, as determined by the Debtors or the Debtors’ agent, with the consent of the Committee, of Executory Contracts and Unexpired Leases (including any amendments or modifications thereto) that will be assumed or assumed and assigned pursuant to the provisions of Article V and which shall be included in the Plan Supplement.

12. “**Avoidance Actions**” means any and all Causes of Action to avoid a transfer of property or an obligation incurred by the Debtor pursuant to any applicable section of the Bankruptcy Code, including sections 544, 545, 547, 548, 549, 550, 551, 553(b), and 724(a) of the Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer or conveyance laws.

13. “**Bankruptcy Code**” means chapter 11 of title 11 of the United States Code.

14. “**Bankruptcy Court**” means the United States Bankruptcy Court for the District of Delaware having jurisdiction over the Chapter 11 Cases or any other court having jurisdiction over the Chapter 11 Cases, including, to the extent of the withdrawal of the reference under 28 U.S.C. § 157, the United States District Court for the District of Delaware.

15. “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure promulgated under section 2075 of the Judicial Code and the general, local and chambers rules of the Bankruptcy Court.

16. “**Bar Date Order**” means the *Order (I) Establishing Bar Dates for Filing Proofs of Prepetition Claims, Including Section 503(b)(9) Claims, and (II) Approving the Form and Manner of the Notice Thereof* [Docket No. 349].

17. “**Business Day**” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)(6)).

18. “**Cash**” means the legal tender of the United States of America.

19. “**Causes of Action**” means any action, claim, cause of action, controversy, demand, right, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license and franchise of any kind or character whatsoever, known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law. Causes of Action also include: (a) any right of setoff, counterclaim or recoupment and any claim for breaches of duties imposed by law or in equity; (b) the right to object to Claims or Interests; (c) any claim pursuant to sections 362 of the Bankruptcy Code; (d) Avoidance Actions; (e) any claim or defense including fraud, mistake, duress and usury and any other defenses set forth in section 558 of the Bankruptcy Code; and (f) any state law fraudulent transfer claim.

20. “**Chapter 11 Cases**” means (a) when used with reference to a particular Debtor, the case pending for that Debtor under chapter 11 of the Bankruptcy Code and (b) when used



with reference to all Debtors, the procedurally consolidated chapter 11 cases pending for the Debtors in the Bankruptcy Court under Case number 14-10867 (BLS).

21. “**Claim**” means any claim, as such term is defined in section 101(5) of the Bankruptcy Code, against a Debtor.

22. “**Claims Bar Date**” means the dates established by the Bankruptcy Court by which Proofs of Claim must be Filed as set forth in the Bar Date Order.

23. “**Claims Objection Deadline**” means 180 days after the Effective Date, or (b) such later deadline for objecting to Claims as may be fixed by an order of the Bankruptcy Court upon motion Filed by the Liquidating Trustee.

24. “**Claims Register**” means the official register of Claims maintained by the Notice, Claims and Balloting Agent.

25. “**Class**” means a class of Claims or Interests as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.

26. “**Coldwater**” means Coldwater Creek Inc., a Debtor.

27. “**Coldwater/Aspenwood Claim**” means an Unsecured Claim against Coldwater or Aspenwood that is not a Guaranteed Claim.

28. “**Committee**” means the statutory committee of unsecured creditors appointed by the U.S. Trustee on April 23, 2014 in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code, as may be reconstituted from time to time.

29. “**Confirmation**” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases, subject to all conditions specified in Article IX.A having been satisfied or waived pursuant to Article IX.C.

30. “**Confirmation Date**” means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases, within the meaning of Bankruptcy Rules 5003 and 9021.

31. “**Confirmation Hearing**” means the confirmation hearing held by the Bankruptcy Court pursuant to section 1129 of the Bankruptcy Code, as such hearing may be continued from time to time.

32. “**Confirmation Order**” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

33. “**Consummation**” means the occurrence of the Effective Date.

34. “**Cure Claim**” means a Claim, if any, based upon a Debtor’s default under an Executory Contract or Unexpired Lease at the time such contract or lease is assumed or assumed

and assigned by the Debtor, or the Debtors' agent, pursuant to section 365 of the Bankruptcy Code.

35. **"Cure Notice"** means a notice, if any, of a proposed amount to be paid on account of a Cure Claim in connection with an Executory Contract or Unexpired Lease to be assumed or assumed and assigned by the Debtors, or the Debtors' agent, under this Plan pursuant to section 365 of the Bankruptcy Code.

36. **"Debtor"** means one or more of the Debtors, as debtors and debtors in possession, each in its respective individual capacity as a debtor and debtor in possession in the Chapter 11 Cases.

37. **"Debtors"** means, collectively: (a) Coldwater; (b) U.S. Inc.; (c) The Spa; (d) M&L; (e) Aspenwood; (f) Rewards; (g) Sourcing; and (h) Sourcing LLC.

38. **"DIP Agent"** means Wells Fargo Bank, National Association, in its respective capacities as administrative agent and collateral agent under the DIP Facility Credit Agreement, together with its respective successors and assigns in such capacities.

39. **"DIP Facility"** means that senior secured superpriority debtor-in-possession credit facility, comprised of a revolving credit facility in an aggregate amount that, when aggregated with the revolving exposure outstanding under the ABL Credit Agreement, shall not exceed \$75,000,000.

40. **"DIP Facility Claim"** means any Claim derived from, based upon, relating to or arising from the DIP Facility Credit Agreement.

41. **"DIP Facility Credit Agreement"** means the agreement governing the DIP Facility, dated as of April 10, 2014 among the Debtors, the DIP Agent and the DIP Lender (as amended, restated, supplemented or otherwise modified from time to time), as well as any other documents entered into in connection therewith.

42. **"DIP Facility Lenders"** means the banks, financial institutions and other lenders party to the DIP Facility Credit Agreement from time to time.

43. **"DIP Order"** means the *Final Order (I) Authorizing Postpetition Financing, (II) Granting Liens and Proving Super Priority Administrative Expense Priority, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection to Prepetition Secured Lenders, (V) Modifying the Automatic Stay and (VI) Scheduling a Final Hearing* [Docket No. 573], authorizing, *inter alia*, the Debtors to enter into the DIP Facility Credit Agreement and incur postpetition obligations thereunder.

44. **"Disbursing Agent"** means (1) the Liquidating Trustee or the Entity or Entities selected by the Liquidating Trustee, with the consent of the Liquidating Trust Oversight Committee, to make or facilitate Distributions contemplated under this Plan, and (2) the Debtors solely with respect to Distributions that are required to be made on the Effective Date to Holders of Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims and Other Secured Claims that are Allowed as of the Effective Date.

45. ***“Disclosure Statement”*** means the *Third Amended Disclosure Statement for the Third Amended Joint Plan of Liquidation of Coldwater Creek Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, dated August 8, 2014 as amended, supplemented or modified from time to time, including all exhibits and schedules thereto and references therein that relate to this Plan, and that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules and any other applicable law.

46. ***“Disputed”*** means, with respect to any Claim or Interest, any Claim or Interest that is (a) disputed under this Plan or subject to a timely objection and/or request for estimation in accordance with section 502(c) of the Bankruptcy Code and Bankruptcy Rule 3018, which objection and/or request for estimation has not been withdrawn or determined by a Final Order, (b) improperly asserted, by the untimely or otherwise improper filing of a Proof of Claim as required by order of the Bankruptcy Court or (c) that is the subject of a Filed objection or adversary proceeding seeking to disallow such Claim pursuant to section 502(d) of the Bankruptcy Code. A Claim or Administrative Claim that is Disputed as to its amount shall not be Allowed in any amount for purposes of distribution until it is no longer a Disputed Claim.

47. ***“Disputed Claims Reserve”*** means a reserve, which may be held in a segregated account, for the payment of Disputed Claims that become Allowed Claims after the Effective Date, which reserve shall be held in trust and maintained by the Liquidating Trustee for the benefit of the Holders of Disputed Claims.

48. ***“Distribution”*** means any distribution provided for in this Plan to Holders of Allowed Claims in full or partial satisfaction of such Allowed Claims.

49. ***“Distribution Dates”*** means, collectively, the First Distribution Date, any Subsequent Distribution Date and the Final Distribution Date.

50. ***“Distribution Record Date”*** means the date that is the Confirmation Date.

51. ***“Effective Date”*** means the date selected by the Debtors, with the consent of the Committee, that is a Business Day after the Confirmation Date on which (a) the conditions to the occurrence of the Effective Date have been met or waived pursuant to Article IX.B and Article IX.C and (b) no stay of the Confirmation Order is in effect.

52. ***“Entity”*** means an entity as such term is defined in section 101(15) of the Bankruptcy Code.

53. ***“Estate”*** means, as to each Debtor, the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

54. ***“Exculpated Claim”*** means any Claim related to any act or omission derived from, based upon, related to or arising from the Chapter 11 Cases, the liquidation of assets, formulation, preparation, dissemination, negotiation, filing, confirmation, approval, implementation or administration of the Plan Support Agreement, the Global Settlement Agreement, the Disclosure Statement, this Plan (including any term sheets related thereto), the property to be distributed under this Plan or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan Support Agreement, Disclosure

Statement, this Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation and Consummation and the administration and implementation of this Plan, or the distribution of property under this Plan or any other related agreement. For the avoidance of doubt, the term “Exculpated Claim” does not include any Avoidance Actions or other Causes of Action against any Entity that is not a Released Party.

55. “**Exculpated Party**” means each of: (a) the Debtors; (b) the Debtors’ current and former officers and directors; (c) the Committee; (d) each member of the Committee in its capacity as such; and (e) Professionals retained by the Debtors and the Committee.

56. “**Executory Contract**” means a contract to which one or more of the Debtors is a party and that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

57. “**Federal Judgment Rate**” means the federal judgment rate in effect as of the Petition Date.

58. “**Fee Claim**” means an Administrative Claim under sections 328, 330, 331, 503 or 1103 of the Bankruptcy Code for compensation of a Professional or other Person, for services rendered in the Chapter 11 Cases on or prior to the Effective Date (including the reasonable expenses of the members of the Committee incurred in the discharge of their duties as such, but specifically excluding the fees and expenses incurred by the professionals and advisors to the DIP Agent, the ABL Agent, the Term Loan Agent and the Term Loan Lenders, which fees and expenses incurred on or prior to the Effective Date shall be paid pursuant to the terms of the DIP Order as modified by the Global Settlement Agreement).

59. “**Fee Claims Reserve**” means a reserve, which may be held in a segregated account, for the payment of Fee Claims that become Allowed Claims after the Effective Date, which reserve shall be held in trust and maintained by the Liquidating Trustee for the benefit of the Holders of Fee Claims.

60. “**File**” or “**Filed**” means file or filed with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

61. “**Final Distribution Date**” means the date when, (a) in the reasonable judgment of the Liquidating Trustee, with the consent of the Liquidating Trust Oversight Committee, substantially all of the assets of the Liquidating Trust have been liquidated and there are no substantial potential sources of additional Cash for Distribution, (b) there remain no Disputed Claims and (c) the Liquidating Trustee distributes all remaining Cash held by the Liquidating Trust to the Holders of Liquidating Trust Interests in accordance with this Plan and the Liquidating Trust Agreement.

62. “**Final Order**” means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter, which has not been reversed, stayed, modified or amended, and as to which the time to appeal or seek certiorari has expired and no appeal or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be filed has been resolved by the highest court to which the order or judgment could be appealed or from

which certiorari could be sought or the new trial, reargument or rehearing shall have been denied, resulted in no modification of such order or has otherwise been dismissed with prejudice.

63. “**First Distribution Date**” means, the Effective Date or the date occurring as soon as practicable after the Effective Date on which the initial Distributions are made to Holders of Allowed Claims entitled to receive distributions from the Liquidating Trust in accordance with Article III of this Plan.

64. “**General Unsecured Claim**” means an Unsecured Claim, including any claim arising from the rejection of an Unexpired Lease or Executory Contract, but excluding any Coldwater/Aspenwood Claim, Guaranteed Claim, or Intercompany Claim.

65. “**Global Settlement Agreement**” means that certain Global Settlement Agreement dated July 10, 2014 approved by the Bankruptcy Court pursuant to the Order, Pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, Approving Global Settlement Agreement [Docket No. 734].

66. “**GOB Agent**” means the joint venture of Hilco Merchant Resources, LLC and Gordon Brothers Retail Partners, LLC.

67. “**Guaranteed Claim**” means an Unsecured Claim against any Debtor that is (a) guaranteed by another Debtor pursuant to a valid written guarantee executed by such Debtor and (b) evidenced by timely Filed Proofs of Claim against (i) the Debtor that is the primary obligor and (ii) the Debtor that is the guarantor; excluding, for the avoidance of doubt, any ABL Claim, DIP Facility Claim or Term Loan Claim.

68. “**Holder**” means any Entity holding, or deemed to be holding under applicable law the beneficial or economic interest or rights in, a Claim or Interest.

69. “**Impaired**” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

70. “**Intercompany Claim**” means any Claim held by a Debtor or non-debtor Affiliate against another Debtor.

71. “**Intercompany Interest**” means an Interest in a Debtor held by another Debtor or non-debtor Affiliate.

72. “**Interests**” means any equity security in a Debtor as defined in section 101(16) of the Bankruptcy Code, including all issued, unissued, authorized or outstanding shares of capital stock of the Debtors together with any warrants, options or other rights to purchase or acquire such equity securities at any time and all rights arising with respect thereto.

73. “**Interim Compensation Order**” means the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals* [Docket No. 449].

74. “**Judicial Code**” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001.

75. “**Lien**” means a lien as defined in section 101(37) of the Bankruptcy Code.
76. “**Liquidating Trust**” means the liquidating trust established by this Plan and described in Article IV of this Plan and the Liquidating Trust Agreement.
77. “**Liquidating Trust Agreement**” means the agreement establishing and delineating the terms and conditions of the Liquidating Trust filed as part of the Plan Supplement.
78. “**Liquidating Trust Assets**” means all property and assets of the Debtors remaining after payment of Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims and Other Secured Claims that are Allowed as of the Effective Date, including without limitation, all Cash and Cash equivalents, all Claims and Causes of Action (including any Avoidance Actions) not otherwise released pursuant to this Plan, the Debtors’ books and records, and other remaining assets of the Debtors, which shall vest in the Liquidating Trust on the Effective Date.
79. “**Liquidating Trust Interests**” means the uncertificated beneficial interests in the Liquidating Trust representing the right of each Holder of an Allowed General Unsecured Claim, Allowed Guaranteed Claim, or Allowed Coldwater/Aspenwood Claim, to receive Cash distributions from the Liquidating Trust in accordance with the terms of this Plan.
80. “**Liquidating Trust Beneficiaries**” means the Holders of Allowed General Unsecured Claims, Allowed Guaranteed Claims and Allowed Coldwater/Aspenwood Claims under this Plan, whether or not such Claims are Allowed as of the Effective Date.
81. “**Liquidating Trust Oversight Committee**” means the committee appointed pursuant to Article IV of this Plan to oversee the activities of the Liquidating Trust and the Liquidating Trustee.
82. “**Liquidating Trustee**” means the Person appointed to act as trustee of the Liquidating Trust in accordance with the terms of this Plan, the Confirmation Order, and the Liquidating Trust Agreement, or any successor appointed in accordance with the terms of this Plan and the Liquidating Trust Agreement.
83. “**M&L**” means Coldwater Creek Merchandising & Logistics Inc., a Debtor.
84. “**Notice, Claims and Balloting Agent**” means Prime Clerk LLC.
85. “**Ordinary Course Professional Order**” means the *Order Authorizing the Employment and Compensation of Certain Professionals in the Ordinary Course of Business* [Docket No. 329].
86. “**Other Secured Claim**” means any Secured Claim that is not a DIP Facility Claim, an ABL Claim or a Term Loan Claim.
87. “**Person**” means a person as such term as defined in section 101(41) of the Bankruptcy Code.

88. “**Petition Date**” means April 11, 2014, the date on which each of the Debtors commenced the Chapter 11 Cases.

89. “**Plan**” means this *Modified Third Amended Joint Plan of Liquidation of Coldwater Creek Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, dated August 8, 2014 including the Plan Supplement (as modified, amended or supplemented from time to time), which is incorporated herein by reference.

90. “**Plan Supplement**” means the compilation of documents and forms of documents, schedules and exhibits to this Plan (including, without limitation, the Liquidating Trust Agreement and any other documents governing the Liquidating Trust) to be Filed, with the consent of the Committee, no later than seven days before the Voting Deadline, on notice to parties in interest, and additional documents, if any, Filed before the Effective Date as supplements or amendments to the Plan Supplement. The Debtors, with the consent of the Committee, shall have the right to amend the documents contained in, and exhibits to, the Plan Supplement through the Effective Date; *provided*, that any amendments to the Plan Supplement may be made only in accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019.

91. “**Plan Support Agreement**” means the agreement, effective as of April 11, 2014 by and among the Debtors, the Term Loan Lenders and the ABL Agent, pursuant to which such parties agreed (subject to certain conditions specified therein) to support this Plan.

92. “**Priority Non-Tax Claims**” means any Claim, other than an Administrative Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

93. “**Priority Tax Claim**” means any Claim of the kind specified in section 507(a)(8) of the Bankruptcy Code.

94. “**Professional**” means an Entity: (a) employed pursuant to a Bankruptcy Court order in accordance with sections 327, 363 or 1103 of the Bankruptcy Code and to be compensated for services rendered before or on the Confirmation Date, pursuant to sections 327, 328, 329, 330, 331 and 363 of the Bankruptcy Code; or (b) awarded compensation and reimbursement by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

95. “**Proof of Claim**” means a written proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

96. “**Pro Rata**” means the proportion that (a) an Allowed Claim in a particular Class bears to the aggregate amount of all Allowed Claims in that Class or (b) Allowed Claims in a particular Class bear to the aggregate amount of Allowed Claims in a particular Class and other Classes entitled to share in the same recovery as such Allowed Claim under this Plan, *provided*, that, with respect to Holders of Class 4 Guaranteed Claims and Class 5 Coldwater/Aspenwood Claims, Pro Rata shall take into account the incremental increase in the Allowed amount of each such Claim solely for purposes of Distributions provided for by Articles III.C.4. and III.C.5. of this Plan.

97. “**Rejection Claim**” means a Claim arising from the rejection of an Executory Contract or Unexpired Lease pursuant to section 365 of the Bankruptcy Code.

98. “**Rejection Procedures Order**” means the *Order Establishing Procedures for the Rejection of Executory Contracts and Unexpired Leases of Nonresidential Real Property* [Docket No. 348].

99. “**Released Party**” means each of: (a) the Debtors; (b) the ABL Lender; (c) the ABL Agent; (d) the Term Loan Lenders; (e) the Term Loan Agent; (f) the DIP Facility Lenders; (g) the DIP Agent; (h) Holders of Series A Preferred Stock and/or any shares of common stock into which any such shares of Series A Preferred Stock have been converted; (i) CC Holdings Agency Corporation, CC Holdings of Delaware, LLC - Series A, and CC Holdings of Delaware, LLC - Series B, each in all respective capacities; and (j) with respect to the entities in clauses (a) through (i), such entity’s predecessors, successors and assigns, subsidiaries, affiliates, beneficial owners, managed accounts or funds, current and former officers, directors, principals, shareholders, direct and indirect equity holders, members, partners (general and limited), employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors and other Professionals.

100. “**Rewards**” means CWC Rewards, Inc., a Debtor.

101. “**Schedules**” means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases and statements of financial affairs Filed by the Debtors [Docket Nos. 356, 357, 358, 359, 360, 361, 362 and 363] pursuant to section 521 of the Bankruptcy Code, as such schedules may be amended, modified or supplemented from time to time.

102. “**Section 503(b)(9) Claim**” means an Administrative Claim arising under section 503(b)(9) of the Bankruptcy Code.

103. “**Secured**” means when referring to a Claim: (a) secured by a Lien on property in which the Estate has an interest, which Lien is valid, perfected and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) Allowed as such pursuant to this Plan.

104. “**Securities Act**” means the Securities Act of 1933, 15 U.S.C. §§ 77a-77aa, as amended, together with the rules and regulations promulgated thereunder.

105. “**Securities Exchange Act**” means the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a-78nn, as amended.

106. “**Security**” means a security as defined in section 2(a)(1) of the Securities Act.



107. “**Series A Preferred Stock**” means any Convertible Series A Preferred Stock of Coldwater issued pursuant to that certain Certificate of Designation of Preferences of Convertible Series A Preferred Stock, that certain Stock Purchase and Investor Rights Agreement, dated as of July 9, 2012 and that certain Registration Rights Agreement, dated as of July 9, 2012.

108. “**Sourcing**” means Coldwater Creek Sourcing Inc., a Debtor.

109. “**Sourcing LLC**” means Coldwater Creek Sourcing LLC, a Debtor.

110. “**Store Closing Approval Order**” means the *Order (I) Authorizing Entry into Agency Agreement, (II) Authorizing Sale of Assets and Store Closing Sales and (III) Granting Related Relief* [Docket No. 355].

111. “**Subsequent Distribution Date**” means any date, as determined by the Liquidating Trustee, with the consent of the Liquidating Trust Oversight Committee, which is after the First Distribution Date and prior to the Final Distribution Date, on which the Liquidating Trustee commences a Distribution to Holders of Allowed Claims entitled to receive distributions from the Liquidating Trust in accordance with Article III of this Plan.

112. “**Tax**” means (a) any net income, alternative or add-on minimum, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, license, property, environmental or other tax, assessment or charge of any kind whatsoever (together in each instance with any interest, penalty, addition to tax or additional amount) imposed by any federal, state or local taxing authority or (b) any liability for payment of any amounts of the foregoing types as a result of being a member of an affiliated, consolidated, combined or unitary group, or being a party to any agreement or arrangement whereby liability for payment of any such amounts is determined by reference to the liability of any other entity.

113. “**Term Loan Agent**” means CC Holdings Agency Corporation, in its capacities as administrative agent and collateral agent under the Term Loan Credit Agreement.

114. “**Term Loan Claims**” means the Secured Claims of the Term Loan Lenders.

115. “**Term Loan Credit Agreement**” means that certain Term Loan Agreement dated as of July 9, 2012 by and among Coldwater Creek U.S. Inc., as lead borrower, the other borrowers thereto, the guarantors party thereto, the Term Loan Lenders and the Term Loan Agent.

116. “**Term Loan Lenders**” means, collectively, CC Holdings of Delaware, LLC - Series A and CC Holdings of Delaware, LLC - Series B, in their capacity as lenders under the Term Loan Credit Agreement.

117. “**The Spa**” means Coldwater Creek The Spa Inc., a Debtor.

118. “**Unexpired Lease**” means a lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

119. “**Unimpaired**” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

120. “**Unsecured Claim**” means any Claim that is neither Secured nor entitled to priority under the Bankruptcy Code or an order of the Bankruptcy Court.

121. “**U.S. Inc.**” means Coldwater Creek U.S. Inc., a Debtor.

122. “**U.S. Trustee**” means the Office of the United States Trustee for the District of Delaware.

123. “**Voting Deadline**” means 4:00 p.m. (prevailing Eastern Time) on September 10, 2014.

## **B. Rules of Interpretation**

### **1. General Rules of Interpretation**

For purposes of this Plan: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document, schedule or exhibit, whether or not Filed, having been Filed or to be Filed shall mean that document, schedule or exhibit, as it may thereafter be amended, modified or supplemented; (d) any reference to an Entity as a holder of a Claim or Interest includes that Entity’s successors and assigns; (e) unless otherwise specified, all references herein to “Articles” are references to Articles hereof or hereto; (f) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (g) unless otherwise specified, the words “herein,” “hereof” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (h) subject to the provisions of any contract, certificate of incorporation, bylaw, instrument, release or other agreement or document entered into in connection with this Plan, the rights and obligations arising pursuant to this Plan shall be governed by, and construed and enforced in accordance with the applicable federal law, including the Bankruptcy Code and the Bankruptcy Rules; (i) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (j) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (k) all references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court’s CM/ECF system; (l) all references to statutes, regulations, orders, rules of courts and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated; and (m) any immaterial effectuating provisions may be interpreted by the Liquidating Trustee in such a manner that is consistent with the overall purpose and intent of this Plan all without further Bankruptcy Court order.

## 2. Defined Terms Referring to Specific Debtors

Defined terms preceded by the name of a Debtor shall refer only to the defined term as applicable to that Debtor.

### C. *Computation of Time*

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

### D. *Governing Law*

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction and implementation of this Plan, any agreements, documents, instruments or contracts executed or entered into in connection with this Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); *provided, however*, that corporate governance matters relating to the Debtors or the Liquidating Trustee, as applicable, not incorporated in New York shall be governed by the laws of the state or province of incorporation of the applicable Debtor or the Liquidating Trustee, as applicable.

### E. *Reference to Monetary Figures*

All references in this Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided.

## **ARTICLE II. ADMINISTRATIVE CLAIMS, DIP FACILITY, ABL CLAIMS AND PRIORITY TAX CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Term Loan Claims, DIP Facility Claims, ABL Claims and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article III.

### A. *Administrative Claims*

#### 1. Administrative Claims

Except with respect to Administrative Claims that are Fee Claims and except to the extent that a Holder of an Allowed Administrative Claim and the Debtors agree to less favorable treatment with respect to such Holder, each Holder of an Allowed Administrative Claim shall be paid in full in Cash on or as soon as reasonably practicable after the Effective Date. All U.S. Trustee fees due and owing under 28 U.S.C. 1930(a)(6) shall continue to accrue until the Chapter 11 Cases are closed, dismissed or converted. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be Filed with respect to an Administrative Claim previously Allowed by Final Order.

## 2. Professional Compensation

### (a) *Fee Claims*

Professionals asserting a Fee Claim for services rendered on or before the Effective Date must File and serve on the Debtors and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order, the Interim Compensation Order or any other applicable order of the Bankruptcy Court, an application for final allowance of such Fee Claim no later than 40 days after the Effective Date; *provided, however*, that any Professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professional Order may continue to receive such compensation or reimbursement of expenses for services rendered before the Effective Date, without further Bankruptcy Court order, pursuant to the Ordinary Course Professional Order. Objections to any Fee Claim must be Filed and served on the Liquidating Trustee and the requesting party no later than 60 days after the Effective Date. For the avoidance of doubt, the fees and expenses incurred by the professionals and advisors to the DIP Agent, the ABL Agent, the Term Loan Agent, and the Term Loan Lenders shall be paid pursuant to the terms of the DIP Order as modified by the Global Settlement Agreement, and such parties shall not be required to file an application for allowance of such fees and expenses.

### (b) *Post-Effective Date Fees and Expenses*

Except as otherwise specifically provided in this Plan, from and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and, subject to the terms of the Liquidating Trust Agreement, the Liquidating Trustee may employ and pay any Professional for services rendered or expenses incurred after the Effective Date in the ordinary course of business without any further notice to any party or action, order or approval of the Bankruptcy Court.

## 3. Administrative Claims Bar Date

Except as otherwise provided in this Article II.A, requests for payment of Administrative Claims must be Filed on or before the Administrative Claims Bar Date. Holders of Administrative Claims that are required to, but do not, File and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped and enjoined from asserting such Administrative Claims against the Debtors' property to be distributed under this Plan, the Liquidating Trust Assets or the Liquidating Trust. Objections to such requests, if any, must be Filed and served on the Liquidating Trustee and the requesting party no later than 60 days after the Effective Date, unless such objection deadline is extended by order of the Bankruptcy Court. Nothing in this Plan shall extend or be deemed to extend the deadline of June 13, 2014 previously fixed by the Bar Date Order for filing Section 503(b)(9) Claims.

### B. *Term Loan Claims*

Pursuant to the Global Settlement Agreement, the Term Loan Claims were Allowed in the amount of \$90,739,670.15 and paid in full in Cash on July 23, 2014. Holders of Term Loan Claims shall not receive any further Distribution under this Plan, other than for reasonable

expenses and Professional fees to the extent set forth in the DIP Order as modified by the Global Settlement Agreement.

*C. DIP Facility and ABL Claims*

The DIP Facility Claims and ABL Claims were previously paid in Cash in full and satisfied. Holders of DIP Facility Claims and ABL Claims shall not receive any Distributions under this Plan.

*D. Priority Tax Claims*

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in settlement and satisfaction of each Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date shall receive, on or as soon as reasonably practicable after the Effective Date, at the option of the Debtors, with the consent of the Committee, one of the following treatments: (1) Cash in an amount equal to the amount of such Allowed Priority Tax Claim, plus interest at the rate determined under applicable nonbankruptcy law and to the extent provided for by section 511 of the Bankruptcy Code or (2) such other treatment as may be agreed upon by such Holder and the Debtors, with the consent of the Committee, or otherwise determined upon an order of the Bankruptcy Court.

*E. Statutory Fees*

On the Effective Date, the Debtors shall pay, in full in Cash, any fees due and owing to the U.S. Trustee at the time of Confirmation. On and after the Effective Date, the Liquidating Trustee shall pay the applicable U.S. Trustee fees with respect to each Debtor that accrue after the Confirmation Date until the earlier of entry of (1) a final decree closing such Debtor's Chapter 11 Case or (2) conversion or dismissal of such Debtor's Chapter 11 Case.

### **ARTICLE III. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

*A. Classification of Claims and Interests*

Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims and Interests. All Claims and Interests, except for Administrative Claims, DIP Facility Claims, ABL Claims and Priority Tax Claims, are classified in the Classes set forth in this Article III. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim also is classified in a particular Class for the purpose of receiving Distributions pursuant to this Plan only to the extent that such Claim is an Allowed Claim in that Class and has not been paid, released or otherwise satisfied before the Effective Date.

*B. Claims Against and Interests in the Debtors*

1. Class 1 – Priority Non-Tax Claims

2. Class 2 – Other Secured Claims
3. Class 3 – General Unsecured Claims
4. Class 4 – Guaranteed Claims
5. Class 5 – Coldwater/Aspenwood Claims
6. Class 6 – Intercompany Claims
7. Class 7 – Intercompany Interests
8. Class 8 – Interests in Coldwater

C. *Treatment of Claims and Interests in the Debtors*

1. Class 1 – Priority Non-Tax Claims

- (a) *Classification:* Class 1 consists of Priority Non-Tax Claims.
- (b) *Treatment:* Except to the extent that a Holder of an Allowed Priority Non-Tax Claim agrees to a less favorable treatment, in exchange for settlement and satisfaction of each Allowed Priority Non-Tax Claim, each Holder of such Allowed Priority Non-Tax Claim shall be paid in full in Cash on or as soon as practicable after the Effective Date. Allowed Priority Non-Tax Claims shall be paid as soon as reasonably practicable after the reconciliation of all Disputed Priority Non-Tax Claims.
- (c) *Voting:* Class 1 is Unimpaired and each Holder of a Class 1 Priority Non-Tax Claim is conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 1 Priority Non-Tax Claims are not entitled to vote to accept or reject this Plan.

2. Class 2 – Other Secured Claims

- (a) *Classification:* Class 2 consists of Other Secured Claims.
- (b) *Treatment:* Except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment, in exchange for settlement and satisfaction of each Allowed Other Secured Claim, each Holder of such Allowed Other Secured Claim shall receive one of the following treatments, as determined by the Debtors, with the consent of the Committee: (i) payment in full in Cash on or as soon as practicable after the Effective Date, including the payment of any interest required to be paid under section 506(b) of the Bankruptcy Code; (ii) delivery of the collateral securing any such Allowed Other Secured Claim; or (iii) other

treatment such that the Allowed Other Secured Claim shall be rendered Unimpaired.

- (c) *Voting:* Class 2 is Unimpaired and each Holder of a Class 2 Other Secured Claim is conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 2 Other Secured Claims are not entitled to vote to accept or reject this Plan.

3. Class 3 – General Unsecured Claims

- (a) *Classification:* Class 3 consists of General Unsecured Claims.
- (b) *Treatment:* Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to a less favorable treatment, in exchange for settlement and satisfaction of each Allowed General Unsecured Claim, each Holder of an Allowed General Unsecured Claim shall receive its Pro Rata share (not to exceed the amount of such Allowed General Unsecured Claim) of the Liquidating Trust Interests issued on account of Liquidating Trust Assets on the Effective Date, representing the right of each Holder of an Allowed General Unsecured Claim to receive Cash Distributions from the Liquidating Trust.
- (c) *Voting:* Class 3 is Impaired. Therefore, Holders of Class 3 General Unsecured Claims are entitled to vote to accept or reject this Plan.

4. Class 4 – Guaranteed Claims

- (a) *Classification:* Class 4 consists of Guaranteed Claims.
- (b) *Treatment:* Except to the extent that a Holder of an Allowed Guaranteed Claim agrees to a less favorable treatment, in exchange for settlement and satisfaction of each Allowed Guaranteed Claim, each Holder of an Allowed Guaranteed Claim shall receive its Pro Rata share (not to exceed the amount of such Allowed Guaranteed Claim) of the Liquidating Trust Interests issued on account of Liquidating Trust Assets on the Effective Date, representing the right of each Holder of an Allowed Guaranteed Claim to receive Cash Distributions from the Liquidating Trust; *provided*, that, solely for purposes of Distributions under this Plan, each Allowed Guaranteed Claim shall be deemed to be increased by 65% of the Allowed amount of such Guaranteed Claim.
- (c) *Voting:* Class 4 is Impaired. Therefore, Holders of Class 4 Guaranteed Claims are entitled to vote to accept or reject this Plan.

5. Class 5 – Coldwater/Aspenwood Claims

- (a) *Classification:* Class 5 consists of Coldwater/Aspenwood Claims.



- (b) *Treatment:* Except to the extent that a Holder of an Allowed Coldwater/Aspenwood Claim agrees to a less favorable treatment, in exchange for settlement and satisfaction of each Allowed Coldwater/Aspenwood Claim, each Holder of an Allowed Coldwater/Aspenwood Claim shall receive its Pro Rata share (not to exceed the amount of such Allowed Coldwater/Aspenwood Claim) of the Liquidating Trust Interests issued on account of Liquidating Trust Assets on the Effective Date, representing the right of each Holder of an Allowed Coldwater/Aspenwood Claim to receive Cash Distributions from the Liquidating Trust; *provided*, that, solely for purposes of Distributions under this Plan, each Allowed Coldwater/Aspenwood Claim shall be deemed to be increased by 20% of the Allowed amount of such Coldwater/Aspenwood Claim.
- (c) *Voting:* Class 5 is Impaired. Therefore, Holders of Class 5 Coldwater/Aspenwood Claims are entitled to vote to accept or reject this Plan.

6. Class 6 – Intercompany Claims

- (a) *Classification:* Class 6 consists of Intercompany Claims.
- (b) *Treatment:* Holders of Intercompany Claims shall not receive any distribution on account of such Intercompany Claims. On the Effective Date, all Intercompany Claims shall be cancelled.
- (c) *Voting:* Holders of Intercompany Claims, as proponents of this Plan, are deemed to accept this Plan and are not entitled to vote to accept or reject this Plan.

7. Class 7 – Intercompany Interests

- (a) *Classification:* Class 7 consists of Intercompany Interests.
- (b) *Treatment:* Holders of Intercompany Interests shall not receive any distribution on account of such Intercompany Interests. On the Effective Date, Intercompany Interests shall be cancelled.
- (c) *Voting:* Holders of Intercompany Interests, as proponents of this Plan, are deemed to accept this Plan and are not entitled to vote to accept or reject this Plan.

8. Class 8 – Interests in Coldwater

- (a) *Classification:* Class 8 consists of Interests in Coldwater.



- (b) *Treatment:* Holders of Interests in Coldwater shall not receive any distribution on account of such Interests. On the Effective Date, Intercompany Interests shall be cancelled.
- (c) *Voting:* Class 8 is Impaired and each Holder of Class 8 Interests in Coldwater is conclusively presumed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Class 8 Interests in Coldwater are not entitled to vote to accept or reject this Plan

*D. Special Provision Governing Claims that are Not Impaired*

Except as otherwise provided in this Plan, nothing under this Plan shall affect the Debtors' rights in respect of any Claims that are not Impaired, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Claims that are not Impaired.

*E. Acceptance or Rejection of this Plan*

1. Voting Class

Class 3, Class 4 and Class 5 are Impaired and are entitled to vote to accept or reject this Plan.

2. Presumed Acceptance of this Plan

Class 1 and Class 2 are Unimpaired and the Holders of Claims in such Classes are deemed to have accepted this Plan and are not entitled to vote to accept or reject this Plan. In addition, Holders of Intercompany Claims in Class 6 and Intercompany Interests in Class 7, as proponents of this Plan, are deemed to accept this Plan.

3. Presumed Rejection of Plan

Class 8 is Impaired and Holders of Interests in Coldwater shall receive no distribution under this Plan. The Holders of Interests in Coldwater are deemed to have rejected this Plan and are not entitled to vote to accept or reject this Plan.

*F. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code*

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of this Plan by Class 3, Class 4 or Class 5. The Debtors shall seek Confirmation pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests.

*G. Subordinated Claims*

Except as expressly provided herein, the allowance, classification and treatment of all Allowed Claims and Interests and the respective distributions and treatments under this Plan take into account and conform to the relative priority and rights of the Claims and Interests in each

Class in connection with any contractual, legal and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code or otherwise.

#### **ARTICLE IV. MEANS FOR IMPLEMENTATION OF THIS PLAN**

##### *A. Implementation of this Plan*

This Plan shall be implemented by, through and at the direction of the Liquidating Trustee in a manner consistent with the terms and conditions set forth herein and in the Liquidating Trust Agreement.

##### *B. Establishment of Liquidating Trust*

Any and all of the Debtors' assets shall remain assets of the Debtors' estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and on the Effective Date, only after payment in full of Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims and Other Secured Claims that are Allowed as of the Effective Date, shall be transferred to and vest in the Liquidating Trust. On the Effective Date, the Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement for the purpose of, among other things, (1) investigating and, if appropriate, pursuing Causes of Action not otherwise released under this Plan, (2) administering and pursuing the Liquidating Trust Assets, (3) resolving all Disputed Claims and (4) making Distributions from the Liquidating Trust as provided for in this Plan and the Liquidating Trust Agreement. The Liquidating Trust shall be entitled to enforce all defenses and counterclaims to all Claims asserted against the Debtors and their Estates, including setoff, recoupment and any rights under section 502(d) of the Bankruptcy Code.

Upon execution of the Liquidating Trust Agreement, the Liquidating Trustee shall be authorized to take all steps necessary to complete the formation of the Liquidating Trust; *provided*, that, prior to the Effective Date, the Debtors, the Committee or the Liquidating Trustee, as applicable, may act as organizers of the Liquidating Trust and take such steps in furtherance thereof as may be necessary, useful or appropriate under applicable law to ensure that the Liquidating Trust shall be formed and in existence as of the Effective Date.

Other than as set forth in this Plan, no Person other than the Liquidating Trustee may pursue Liquidating Trust Assets on or after the Effective Date. The Liquidating Trustee shall be deemed hereby substituted as plaintiff, defendant, or in any other capacity for the Debtors in (1) all pending matters including but not limited to motions, contested matters and adversary proceedings in the Bankruptcy Court, and (2) any Causes of Action not otherwise released pursuant to this Plan pending before the Bankruptcy Court or any other court that relates to a Liquidating Trust Asset without the need for filing any motion for such relief. On the Effective Date, the Debtors and the Liquidating Trustee shall execute the Liquidating Trust Agreement and shall have established the Liquidating Trust pursuant to this Plan. In the event of any conflict between the terms of Article IV of this Plan and the terms of the Liquidating Trust Agreement, the terms of the Liquidating Trust Agreement shall control.

*C. Treatment of Liquidating Trust for Federal Income Tax Purposes; No Successor-in-Interest*

The Liquidating Trust shall be established for the primary purpose of liquidating and distributing the assets transferred to it, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. Accordingly, the Liquidating Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the Liquidating Trust Assets, make timely distributions to the Liquidating Trust Beneficiaries and not unduly prolong its duration. The Liquidating Trust shall not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth in this Plan or in the Liquidating Trust Agreement. The record holders of beneficial interests shall be recorded and set forth in a register maintained by the Liquidating Trustee expressly for such purpose.

The Liquidating Trust is intended to qualify as a “grantor trust” for federal income tax purposes with the Liquidating Trust Beneficiaries treated as grantors and owners of the Liquidating Trust. For all federal income tax purposes, all parties (including the Debtors, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) shall treat the transfer of the Liquidating Trust Assets by the Debtors to the Liquidating Trust, as set forth in the Liquidating Trust Agreement, as a transfer of such assets by the Debtors to the Holders of Allowed Claims entitled to distributions from the Liquidating Trust Assets, followed by a transfer by such Holders to the Liquidating Trust. Thus, the Liquidating Trust Beneficiaries shall be treated as the grantors and owners of a grantor trust for federal income tax purposes.

As soon as practicable after the Effective Date, the Liquidating Trustee shall make a good faith determination of the fair market value of the Debtors’ assets as of the Effective Date, *provided, however*, that the Liquidating Trustee shall not be required to hire an expert to make such a valuation. This valuation shall be used consistently by all parties (including the Debtors, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) for all federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding the valuation of the Liquidating Trust Assets.

The right and power of the Liquidating Trustee to invest the Liquidating Trust Assets, the proceeds thereof, or any income earned by the Liquidating Trust, shall be limited to the right and power that a liquidating trust, within the meaning of section 301.7701-4(d) of the Treasury Regulations, is permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings or other IRS pronouncements, and to the investment guidelines of section 345 of the Bankruptcy Code. The Liquidating Trustee may expend the Cash of the Liquidating Trust (1) as reasonably necessary to meet contingent liabilities and to maintain the value of the respective assets of the Liquidating Trust during liquidation, (2) to pay the respective reasonable administrative expenses (including, but not limited to, any taxes imposed on the Liquidating Trust) and (3) to satisfy other respective liabilities incurred by the Liquidating Trust in accordance with this Plan and the Liquidating Trust Agreement (including, without limitation, the payment of any taxes).

*D. Liquidating Trust Interests*

On the Effective Date, each Holder of an Allowed General Unsecured Claim, Guaranteed Claim, or Coldwater/Aspenwood Claim shall, by operation of this Plan, receive its Pro Rata Share of the Liquidating Trust Interests. Liquidating Trust Interests shall be reserved for Holders of Disputed General Unsecured Claims, Guaranteed Claims, or Coldwater/Aspenwood Claims and issued by the Liquidating Trust to, and held by the Liquidating Trustee in, the Disputed Claims Reserve pending allowance or disallowance of such Claims. No other entity shall have any interest, legal, beneficial, or otherwise, in the Liquidating Trust.

*E. The Liquidating Trustee*

The Liquidating Trustee will be selected by the Committee and identified in the Plan Supplement. The appointment of the Liquidating Trustee shall be approved in the Confirmation Order, and the Liquidating Trustee's duties shall commence as of the Effective Date. The Liquidating Trustee shall administer this Plan and the Liquidating Trust and shall serve as a representative of the Debtors' estates under section 1123(b) of the Bankruptcy Code.

In accordance with the Liquidating Trust Agreement, the Liquidating Trustee shall serve in such capacity through the earlier of (1) the date that the Liquidating Trust is dissolved and (2) the date such Liquidating Trustee resigns, is terminated, or is otherwise unable to serve; *provided, however*, that, in the event that the Liquidating Trustee resigns, is terminated, or is otherwise unable to serve, the Liquidating Trust Oversight Committee shall appoint a successor to serve as the Liquidating Trustee in accordance with the Liquidating Trust Agreement. To the extent that the Liquidating Trust Oversight Committee does not appoint a successor within the time periods specified in the Liquidating Trust Agreement, then the Bankruptcy Court, upon the motion of any party-in-interest, including counsel to the Liquidating Trust, shall approve a successor to serve as the Liquidating Trustee. Any such successor Liquidating Trustee shall serve in such capacity until the Liquidating Trust is dissolved.

1. Insurance; Bond

The Liquidating Trustee shall obtain insurance coverage with respect to the liabilities and obligations of the Liquidating Trustee and the Liquidating Trust Oversight Committee under the Liquidating Trust Agreement (in the form of an errors and omissions policy or otherwise) unless both the Liquidating Trustee and Liquidating Trust Oversight Committee unanimously agree that such insurance shall not be required. The Liquidating Trustee shall serve with a bond, the terms of which shall be agreed to by the Liquidating Trust Oversight Committee, and the cost and expense of which shall be paid by the Liquidating Trust.

2. Fiduciary Duties of the Liquidating Trustee

Pursuant to this Plan and the Liquidating Trust Agreement, the Liquidating Trustee shall act in a fiduciary capacity on behalf of the interests of all Holders of Claims that will receive Distributions pursuant to the terms of this Plan.

### 3. Compensation

The Liquidating Trustee shall be compensated on reasonable terms determined by the Committee and as set forth in the Plan Supplement.

### 4. Retention of Liquidating Trustee Professionals and Compensation Procedure

On and after the Effective Date, subject to the terms of the Liquidating Trust Agreement, the Liquidating Trustee may engage such professionals and experts as may be deemed necessary and appropriate by the Liquidating Trustee to assist the Liquidating Trustee in carrying out the provisions of this Plan and the Liquidating Trust Agreement, including, but not limited to, Professionals retained prior to the Effective Date by either the Debtors or the Committee. Subject to the terms of the Liquidating Trust Agreement, for services performed from and after the Effective Date, Professionals retained by the Liquidating Trustee shall receive compensation and reimbursement of expenses in a manner to be determined by the Liquidating Trustee in consultation with the Liquidating Trust Oversight Committee.

### 5. Duties and Powers

The duties and powers of the Liquidating Trustee shall include, but not be limited to, the following:

- (a) to exercise all power and authority that may be necessary to implement this Plan and enforce all provisions hereof, commence and prosecute all proceedings that may be commenced and take all actions that may be taken by any officer, director or shareholder of the Debtors with like effect as if authorized, exercised and taken by unanimous action of such officers, directors and shareholders, including consummating this Plan;
- (b) to maintain all bank accounts, make Distributions and take other actions consistent with this Plan, including the maintenance of appropriate reserves (including the Disputed Claims Reserve), in the name of the Liquidating Trust;
- (c) to maintain the books and records of the Liquidating Trust, including any books and records of the Debtors transferred to the Liquidating Trust;
- (d) to take all steps reasonably necessary and practicable to terminate the corporate existence of the Debtors, including the filing of any motions or other pleadings in the Bankruptcy Court, if necessary;
- (e) to incur and pay reasonable and necessary expenses in connection with the implementation and consummation of this Plan;
- (f) to make decisions without court approval, regarding the retention or engagement of professionals or other Persons, and to pay, without court approval, all reasonable fees and expenses of the Liquidating Trust accruing from and after the Effective Date;

- (g) to collect and liquidate all assets of the Debtors transferred to the Liquidating Trust and to administer the wind down of the Debtors' affairs;
- (h) to prepare and file Tax returns and related forms and filings on behalf of the Debtors, to protest or appeal any Tax assessment, and to apply for or otherwise pursue any Claim for any Tax refund, rebate or reduction;
- (i) to prosecute and/or settle Causes of Action not otherwise released pursuant to this Plan, on behalf of and in the name of the Debtors;
- (j) to seek a determination of Tax liability under section 505 of the Bankruptcy Code or otherwise and to pay, or cause to be paid, from the assets of the Debtors transferred to the Liquidating Trust, any Taxes incurred by the Liquidating Trustee and/or the Debtors before or after the Effective Date;
- (k) to collect, or cause to be collected, any accounts receivable or other claims of the Debtors not otherwise disposed of pursuant to this Plan;
- (l) to invest, or cause to be invested, Cash as deemed appropriate by the Liquidating Trustee;
- (m) to enter, or cause to be entered, into any agreement or execute any document required by or consistent with this Plan and perform all of the Debtors' obligations under this Plan;
- (n) to abandon, or cause to be abandoned, in any commercially reasonable manner any assets of the Debtors that the Liquidating Trustee reasonably concludes are burdensome or of inconsequential value and benefit to the Liquidating Trust without any need for Bankruptcy Court approval;
- (o) to prepare and file post-Effective Date operating reports;
- (p) to file, prosecute and/or settle objections to Proofs of Claim filed in the Chapter 11 Cases;
- (q) to take all other actions not inconsistent with the provisions of this Plan which the Liquidating Trustee deems reasonably necessary or desirable in connection with the administration and consummation of this Plan; and
- (r) to exercise such other powers as may be vested in the Liquidating Trustee by order of the Bankruptcy Court.

On and after the Effective Date, the Liquidating Trustee may exercise any of the foregoing powers without any further order of the Bankruptcy Court provided the Liquidating Trustee acts in conformity with this Plan, the Liquidating Trust Agreement (which includes, among other things, limitations on the Liquidating Trustee's discretion to take certain action



without approval of the Liquidating Trust Oversight Committee) and any applicable orders of the Bankruptcy Court.

On the Effective Date, the Debtors shall transfer to the Liquidating Trustee the Debtors' evidentiary privileges, including the attorney/client privilege, solely as they relate to Causes of Action not otherwise released pursuant to this Plan. This Plan shall be considered a motion pursuant to sections 105, 363 and 365 of the Bankruptcy Code for such relief. Upon such transfer, the Debtors and the Estates shall have no other further rights or obligations with respect thereto. Privileged communications may be shared among the Liquidating Trustee and the Liquidating Trust Oversight Committee without compromising the privileged nature of such communications, in accordance with the "joint interest" doctrine.

*F. The Liquidating Trust Oversight Committee*

The Committee shall choose a minimum of three individuals to serve as members of the Liquidating Trust Oversight Committee, which shall have the responsibility to review and advise the Liquidating Trustee with respect to the liquidation and distribution of the Liquidating Trust Assets in accordance with the Liquidating Trust Agreement and this Plan. The Debtors or the Committee shall file a notice identifying the members of the Liquidating Trust Oversight Committee in the Plan Supplement. Vacancies on the Liquidating Trust Oversight Committee shall be filled by a Person designated by the remaining member or members of the Liquidating Trust Oversight Committee from among the Holders of General Unsecured Claims, Guaranteed Claims and Coldwater/Aspenwood Claims, and the Liquidating Trust Oversight Committee shall use reasonable efforts to maintain such composition of the members of the Liquidating Trust Oversight Committee as existed prior to the resignation of such member. The Liquidating Trustee shall have the authority to seek an order from the Bankruptcy Court removing or replacing members of the Liquidating Trust Oversight Committee for cause. Any successor appointed pursuant to this section shall become fully vested with all of the rights, powers, duties and obligations of his or her predecessor. For the avoidance of doubt, no member of the Liquidating Trust Oversight Committee shall be compensated for serving as a member of the Liquidating Trust Oversight Committee, *provided, however*, that such members may be reimbursed from the Liquidation Trust for reasonable out of pocket expenses (excluding professional fees and related costs, if any).

Pursuant to the Liquidating Trust Agreement, the Liquidating Trustee will need the consent of the Liquidating Trust Oversight Committee before pursuing any potential Avoidance Actions under section 547 of the Bankruptcy Code.

*G. Liability of Liquidating Trustee, Liquidating Trust Oversight Committee; Indemnification*

Neither the Liquidating Trustee, the Liquidating Trust Oversight Committee, their respective members, designees or professionals, or any duly designated agent or representative of the Liquidating Trustee or the Liquidating Trust Oversight Committee, nor their respective employees, shall be liable for the act or omission of any other member, designee, agent, or representative of such Liquidating Trustee or Liquidating Trust Oversight Committee, nor shall such Liquidating Trustee, or any member of the Liquidating Trust Oversight Committee, be liable for any act or omission taken or omitted to be taken in its capacity as Liquidating Trustee,

or as a member of the Liquidating Trust Oversight Committee, respectively, other than for specific acts or omissions resulting from such Liquidating Trustee's or such member's willful misconduct, gross negligence, or fraud. The Liquidating Trustee shall be entitled to enjoy all of the rights, powers, immunities and privileges applicable to a chapter 7 trustee and the Liquidating Trust Oversight Committee shall be entitled to enjoy all of the rights, powers, immunities and privileges of an official committee of unsecured creditors. The Liquidating Trustee, or the Liquidating Trust Oversight Committee, may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such persons, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, neither the Liquidating Trustee nor the Liquidating Trust Oversight Committee shall be under any obligation to consult with its attorneys, accountants, financial advisors or agents, and their determination not to do so shall not result in the imposition of liability on the Liquidating Trustee or Liquidating Trust Oversight Committee or their respective members and/or designees, unless such determination is based on willful misconduct, gross negligence, or fraud. The Liquidating Trust shall indemnify and hold harmless the Liquidating Trustee, the Liquidating Trust Oversight Committee and their members, designees and professionals, and all duly designated agents and representatives thereof (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs and expenses (including reasonable attorneys' fees, disbursements, and related expenses) which such parties may incur or to which such parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against such parties arising out of or due to their acts or omissions, or consequences of such acts or omissions, with respect to the implementation or administration of the Liquidating Trust or this Plan or the discharge of their duties under the Liquidating Trust Agreement; *provided, however*, that no such indemnification will be made to such persons for actions or omissions as a result of willful misconduct, gross negligence, or fraud. Persons dealing with the Liquidating Trustee shall look only to the Liquidating Trust Assets to satisfy any liability incurred by the Liquidating Trustee or the Liquidating Trust Oversight Committee to such person in carrying out the terms of the Liquidating Trust Agreement, and neither the Liquidating Trustee nor the Liquidating Trust Oversight Committee shall have any personal obligation to satisfy any such liability.

#### *H. Disputed Claims Reserve*

The Liquidating Trustee shall maintain a Disputed Claims Reserve pending allowance or disallowance of Disputed Claims, and withhold such Cash from Distributions to Holders of Allowed General Unsecured Claims, Guaranteed Claims, and Coldwater/Aspenwood Claims. Upon the Final Distribution Date, the Liquidating Trustee shall distribute any Cash remaining in any Disputed Claims Reserve to Holders of Allowed Claims in accordance with the respective priorities set forth in this Plan.

#### *I. Abandonment, Disposal and/or Destruction of Records*

The Liquidating Trustee shall be authorized pursuant to section 554 of the Bankruptcy Code, in its sole discretion, without any further notice to any party or action, order or approval of the Bankruptcy Court, to abandon, dispose of, or destroy in any commercially reasonable manner



all originals and/or copies of any documents, books and records, including any electronic records, of the Debtors that are transferred to the Liquidating Trust and which the Liquidating Trustee reasonably concludes are burdensome or of inconsequential value and benefit to the Liquidating Trust.

*J. Termination of the Liquidating Trust*

The Liquidating Trust will terminate on the earlier of: (1) final liquidation, administration and distribution of the Liquidating Trust Assets in accordance with the terms of the Liquidating Trust Agreement and this Plan, and its full performance of all other duties and functions as set forth in the Liquidating Trust Agreement or this Plan; and (2) the fifth anniversary of the Effective Date. Notwithstanding the foregoing, multiple fixed term extensions of the Liquidating Trust can be obtained so long as Bankruptcy Court approval is obtained within six months before the expiration of the term of the Liquidating Trust and each extended term. The aggregate of all such extensions shall not exceed three years, unless the Liquidating Trustee receives a favorable ruling from the IRS that any further extension would not adversely affect the status of the Liquidating Trust as a liquidating trust within the meaning of section 301.7701-4(d) of the Treasury Regulations for federal income tax purposes. After (1) the Final Distributions pursuant to this Plan, (2) the filing by or on behalf of the Liquidating Trust of a certification of dissolution with the Bankruptcy Court and (3) any other action deemed appropriate by the Liquidating Trustee, the Liquidating Trust shall be deemed dissolved for all purposes without the necessity for any other or further actions.

*K. Full and Final Satisfaction Against Liquidating Trust*

On and after the Effective Date, the Liquidating Trust shall have no liability on account of any Claims or Interests except as set forth in this Plan and in the Liquidating Trust Agreement. All payments and all Distributions made by the Liquidating Trustee under this Plan shall be in full and final satisfaction, settlement, and release of and in exchange for all Claims or Interests against the Debtors.

*L. Funding of this Plan*

This Plan shall be funded with Cash on the Effective Date (prior to giving effect to the Liquidating Trust) and the Liquidating Trust Assets.

*M. Modified Substantive Consolidation*

This Plan shall serve as a motion by the Debtors seeking entry of an order substantively consolidating each of the Estates of the Debtors into a single consolidated Estate solely for the purposes of voting and Distributions under this Plan, subject to the incremental increase in the Allowed amount of each Class 4 Guaranteed Claim and Class 5 Coldwater/Aspenwood Claim as provided for by Articles III.C.4. and III.C.5. of this Plan. On and after the Effective Date, solely for the purpose of Distributions under this Plan, (1) all assets and liabilities of the substantively consolidated Debtors will be deemed to be merged, (2) the obligations of each Debtor will be deemed to be the obligation of the substantively consolidated Debtors, (3) any Claims filed or to be filed in connection with any such obligations will be deemed Claims against the substantively consolidated Debtors, (4) each Claim filed in the Chapter 11 Case of any Debtor will be deemed

filed against the Debtors in the consolidated Chapter 11 Cases in accordance with the substantive consolidation of the assets and liabilities of the Debtors, (5) all transfers, disbursements and distributions made under this Plan will be deemed to be made by the substantively consolidated Debtors and (6) except to the limited extent provided in Article III.C.4. hereof with respect to Distributions on account of Allowed Guaranteed Claims, all guarantees by a Debtor of the obligations of any other Debtor and any joint or several liability of any of the Debtors shall be deemed eliminated so that any Claim against any Debtor and any guarantee thereof executed by any other Debtor and any joint or several liability of any of the Debtors shall be deemed to be one obligation of the substantively consolidated Debtors. Holders of Allowed Claims in each Class shall be entitled to their share of assets available for distribution to such Class without regard to which Debtor was originally liable for such Claim.

The modified substantive consolidation effected pursuant to this section shall not (other than for purposes related to funding Distributions under the Plan) result in the merger or otherwise affect the separate legal existence of each Debtor, and shall not affect (1) defenses to any Claims and/or Causes of Action or requirements for any third party to establish mutuality in order to assert a right to setoff under section 553 of the Bankruptcy Code, (2) distributions out of any insurance policies or proceeds of such policies, (3) executory contracts or unexpired leases that were entered into during the Chapter 11 Cases or that have been or will be assumed or rejected or (4) the Liquidating Trust's ability to subordinate or otherwise challenge Claims on an entity by entity basis.

*N. Coldwater Creek Name*

From and after the Effective Date, the name of each Debtor shall be changed as set forth below without any further action of the Debtors or the Liquidating Trustee.

<b>Existing Name</b>	<b>Post-Effective Date Name</b>
Coldwater Creek Inc.	CWC Liquidation Inc.
Coldwater Creek U.S. Inc.	CWC U.S. Liquidation Inc.
CWC Rewards Inc.	CWC Rewards Liquidation Inc.
Coldwater Creek Merchandising & Logistics Inc.	CWC M&L Liquidation Inc.
Aspenwood Advertising Inc.	CWC Advertising Liquidation Inc.
Coldwater Creek The Spa Inc.	CWC Spa Liquidation Inc.
Coldwater Creek Sourcing Inc.	CWC Sourcing Liquidation Inc.
CWC Sourcing LLC	CWC Sourcing Liquidation LLC

*O. Direction to Parties*

From and after the Effective Date, the Liquidating Trustee may apply to the Bankruptcy Court for an order directing any necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property contemplated by or necessary to effectuate this Plan, and to perform any other act, including the satisfaction of any Lien, that is necessary for the consummation of this Plan, pursuant to section 1142(b) of the Bankruptcy Code.

*P. Winding Up Affairs*

Following the Effective Date, the Debtors shall not engage in any business activities or take any actions, except those necessary to consummate this Plan and wind up the affairs of the Debtors, in each case as directed by and through the Liquidating Trustee.

*Q. Title to Accounts*

Title to all of the Debtors' bank, brokerage and other accounts shall vest in the Liquidating Trust, effective as of the Effective Date, without any further order of the Bankruptcy Court or further action on the part of any Person or Entity. On and after the Effective Date, all such accounts shall be deemed to be accounts in the name of the Liquidating Trust without any further action by any Person or Entity or any further order of the Bankruptcy Court.

*R. Cancellation of Equity Interests*

On the Effective Date, all Interests in the Debtors, and all agreements and other documents evidencing or creating rights of any Person or Entity against any of the Debtors related to or based upon any Interests, including any options or warrants to purchase Interests and any agreements or instruments obligating the Debtors to issue, transfer, redeem, make payment on or sell any Interests, shall be deemed cancelled and null and void without any further action or filing by the Debtors, the Liquidating Trustee or any other Person or Entity.

*S. Effectuating Documents; Further Transactions*

On and after the Effective Date, the Liquidating Trustee is authorized to and may issue, execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of this Plan without the need for any approvals, authorization or consents except those expressly required pursuant to this Plan.

*T. Exemption from Certain Taxes and Fees*

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any stamp tax, recording tax, personal property tax, real estate transfer tax, sales tax, use tax, privilege tax, or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct and be deemed to direct the

appropriate federal, state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment. Such exemption specifically applies, without limitation, to (1) the creation of any mortgage, deed of trust, lien or other security interest; (2) the assuming or assuming and assigning of any contract, lease or sublease; (3) any transaction authorized by this Plan; (4) any sale of a Liquidating Trust Asset by the Liquidating Trust in furtherance of the Plan, including but not limited to any sale of personal or real property and (4) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with this Plan, including: (a) any merger agreements; (b) agreements of consolidation, restructuring, disposition, liquidation or dissolution; (c) deeds; (d) bills of sale; or (e) assignments executed in connection with any transaction occurring under this Plan.

## **ARTICLE V.**

### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### *A. Assumption and Rejection of Executory Contracts and Unexpired Leases*

On the Effective Date, except as otherwise provided herein, or in any contract, instrument, release, indenture or other agreement or document entered into in connection with this Plan, Executory Contracts and Unexpired Leases shall be deemed rejected as of the Effective Date, unless such Executory Contract or Unexpired Lease: (1) was assumed, assumed and assigned or rejected previously by the Debtors; (2) previously expired or terminated pursuant to its own terms; (3) is the subject of a motion to assume or assume and assign Filed on or before the Confirmation Date; or (4) is identified as an Executory Contract or Unexpired Lease on the Assumed Executory Contracts and Unexpired Lease List.

Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the assumptions or rejections of such Executory Contracts or Unexpired Leases as set forth in this Plan and the Assumed Executory Contract and Unexpired Leases List, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated herein, assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to this Plan are effective as of the Effective Date. Each Executory Contract or Unexpired Lease assumed pursuant to this Plan or by Bankruptcy Court order but not assigned to a third party before the Effective Date shall re-vest in and be fully enforceable by the Liquidating Trustee in accordance with its terms, except as such terms may have been modified by the provisions of this Plan or any order of the Bankruptcy Court authorizing and providing for its assumption pursuant to section 365 of the Bankruptcy Code. Any motions to assume or assume and assign Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date by a Final Order.

#### *B. Claims Based on Rejection of Executory Contracts or Unexpired Leases*

Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, if any, must be filed with the Bankruptcy Court within 30 days after the effective date of such rejection. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed within such time will be automatically disallowed, forever barred

from assertion and shall not be enforceable against the property to be distributed under this Plan without the need for any objection by the Liquidating Trustee or further notice to, or action, order or approval of the Bankruptcy Court. Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims, Guaranteed Claims, or Coldwater/Aspenwood Claims, as applicable, and shall be treated in accordance with Article III of this Plan, as applicable.

**Rejection Claims for which a Proof of Claim is not timely Filed will be forever barred from assertion against the Debtors, the Estates and the Debtors' property or the Liquidating Trustee unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein.**

*C. Cure of Defaults for Executory Contracts and Unexpired Leases Assumed or Assumed and Assigned*

Any monetary defaults under each Executory Contract and Unexpired Lease as reflected on the Assumed Executory Contracts and Unexpired Lease List, if any, shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash on the Effective Date, subject to the limitations described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (1) the amount of any payments to cure such a default, (2) the ability of the Liquidating Trustee or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed or assumed and assigned or (3) any other matter pertaining to assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption. At least ten days before the Confirmation Hearing, the Debtors shall distribute, or cause to be distributed, Cure Notices of proposed assumption and proposed amounts of Cure Claims to the applicable third parties. Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or related cure amount must be Filed, served and actually received by the Debtors before the date of the Confirmation Hearing. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or cure amount will be deemed to have assented to such assumption or cure amount; *provided, however*, the Debtors, with the consent of the Committee, shall have the right to alter, amend, modify or supplement the Assumed Executory Contracts and Unexpired Lease List, as identified in the Plan Supplement, through and including the Effective Date. To the extent that the Debtors, with the consent of the Committee, alter, amend, modify or supplement the Assumed Executory Contracts and Unexpired Lease List included in the Plan Supplement, the Debtors will provide notice to each counterparty to an affected Executory Contract or Unexpired Lease as soon as practicable but no later than five days after such decision.

Assumption of any Executory Contract or Unexpired Lease pursuant to this Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed or assumed and assigned Executory Contract or Unexpired Lease at any time before the date the Debtors or the Debtors' agent, assume or assume and assign such Executory Contract or

Unexpired Lease. Any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed or assumed and assigned pursuant to this Plan or an order of the Bankruptcy Court shall be deemed disallowed and expunged, without further notice to or action, order or approval of the Bankruptcy Court.

*D. Modifications, Amendments, Supplements, Restatements or Other Agreements*

Unless otherwise provided in this Plan, each Executory Contract or Unexpired Lease that is assumed or assumed and assigned shall include all modifications, amendments, supplements, restatements or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and Executory Contracts and Unexpired Leases related thereto, if any, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under this Plan.

Modifications, amendments, supplements and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority or amount of any Claims that may arise in connection therewith.

*E. Reservation of Rights*

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Assumed Executory Contracts and Unexpired Lease List, nor anything contained in this Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtors have any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Liquidating Trustee, as applicable, with the consent of the Committee or Liquidating Trust Oversight Committee, as applicable, shall have 28 days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

## **ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS**

*A. Timing and Calculation of Amounts to Be Distributed*

Unless otherwise provided in this Plan, on each Distribution Date, each Holder of an Allowed Claim shall receive such distributions that this Plan provides for Allowed Claims in each applicable Class in accordance with Article III hereof. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article VII of this Plan. Except as otherwise provided in this Plan, Holders of Claims shall not be entitled to interest, dividends or accruals on the distributions provided for in this Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date. The Liquidating Trustee shall have no



obligation to recognize any transfer of Claims or Interests occurring on or after the Confirmation Date.

*B. Disbursing Agent*

Cash Distributions under this Plan shall be made (1) by the Debtors on the Effective Date solely with respect to Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims and Other Secured Claims that are Allowed as of the Effective Date, and (2) by the Disbursing Agent on the First Distribution Date, Subsequent Distribution Dates, and the Final Distribution Date, as applicable, with respect to all other Distributions. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties. As soon as reasonably practicable after the Effective Date, the Debtors shall provide the Liquidating Trustee with an accounting of all Distributions made by the Debtors on the Effective Date.

*C. Rights and Powers of Disbursing Agent*

1. Powers of the Disbursing Agent

The Disbursing Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under this Plan; (b) make all distributions contemplated hereby; and (c) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to this Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

2. Expenses Incurred on or After the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and out-of-pocket expenses incurred by the Disbursing Agent on or after the Effective Date (including taxes) and any reasonable compensation to the Disbursing Agent for services rendered shall be paid in Cash by the Liquidating Trustee from the Liquidating Trust Assets pursuant to the terms of the Liquidating Trust Agreement.

*D. Delivery of Distributions and Undeliverable or Unclaimed Distributions*

1. Delivery of Distributions

Except as otherwise provided in this Plan, distributions to Holders of Allowed Claims shall be made to holders of record as of the Distribution Record Date by the Disbursing Agent, as appropriate: (i) to the signatory set forth on any of the Proofs of Claim Filed by such Holder or other representative identified therein; (ii) at the addresses set forth in any written notice of address change delivered to the Debtors or the Notice, Claims and Balloting Agent prior to the Effective Date, or the Liquidating Trustee after the Effective Date, with respect to any Proof of Claim; (iii) at the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Debtors or the Notice, Claims and Balloting Agent prior to the Effective Date, or the Liquidating Trustee after the Effective Date, have not received a written notice of a change of address; or (iv) to the attention of any counsel that has appeared in the Chapter 11 Cases on the Holder's behalf. Subject to this Article VI, distributions under this Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment or like legal process, so that each

Holder of an Allowed Claim shall have and receive the benefit of the distributions in the manner set forth in this Plan. The Disbursing Agent shall not incur any liability whatsoever on account of any distributions under this Plan except for gross negligence or willful misconduct.

## 2. Fractional Dollars; De Minimis Distributions

Notwithstanding any other provision of this Plan to the contrary, (a) the Disbursing Agent shall not be required to make Distributions or payments of fractions of dollars, and whenever any Distribution of a fraction of a dollar under the Plan would otherwise be required, the actual Distribution made may reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down and (b) the Disbursing Agent shall have no duty to make a Distribution on account of any Allowed Claim on a Distribution Date (i) if the aggregate amount of all Distributions authorized to be made on such date is less than \$50,000.00, in which case such Distributions shall be deferred to the next Distribution Date, (ii) if the amount to be distributed to that Holder on the particular Distribution Date is less than \$100.00, unless such Distribution constitutes the final Distribution to such Holder, or (iii) the amount of the final Distribution to such Holder is less than \$25.00, in which case such Distribution shall revert to the Liquidating Trust to be donated to a charitable institution to be chosen by the Liquidating Trustee. After final Distributions have been made in accordance with the terms of this Plan and the Liquidating Trust Agreement, if the amount of remaining cash is less than \$50,000.00, the Liquidating Trustee, after consultation with the Liquidating Trust Oversight Committee, may donate such amount to a charitable institution to be chosen by the Liquidating Trustee.

## 3. Undeliverable Distributions and Unclaimed Property

In the event that any Distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Disbursing Agent has been provided written notice of or has determined the then-current address of such Holder, at which time such Distribution shall be made to such Holder without interest; *provided, however*, that upon the expiration of 120 days after a Distribution is returned as undeliverable, such Distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and shall revert to the Liquidating Trust automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial or state escheat, abandoned or unclaimed property laws to the contrary).

## *E. Compliance with Tax Requirements*

In connection with this Plan, to the extent applicable, the Debtors or the Liquidating Trustee, as applicable, shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to this Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in this Plan to the contrary, the Disbursing Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under this Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions or establishing any other mechanisms the Disbursing Agent believes are reasonable and appropriate. The Liquidating Trustee reserves the right to allocate all distributions made



under this Plan in compliance with applicable wage garnishments, alimony, child support and other spousal awards, liens and encumbrances.

The Liquidating Trustee shall be authorized to require each Holder of a Claim to provide it with an executed Form W-9, Form W-8, or similar tax form as a condition precedent to being sent a Distribution. The Liquidating Trustee shall provide advance written notice of any such requirement to each Holder of a Claim affected thereby. The notice shall provide each Holder of a Claim with a minimum of 90 days after the date of mailing of such notice to provide an executed Form W-9, Form W-8 or similar tax form to the Liquidating Trustee and shall expressly state that a failure to provide such form within the stated period shall result in a forfeiture of the right to receive any Distribution under the Plan, that any such Distribution shall revert to the Liquidating Trust for distribution on account of other Allowed Claims and that the Claim of the Holder originally entitled to such Distribution shall be waived, discharged and forever barred without further order of the Bankruptcy Court. If a Holder of an Allowed Claim does not provide the Liquidating Trustee with an executed Form W-9, Form W-8 or similar tax form within the time period specified in such notice, or such later time period agreed to by the Liquidating Trustee in writing in its discretion, such Holder shall be deemed to have forfeited the right to receive any Distribution under the Plan, any such Distribution shall revert to the Liquidating Trust for distribution on account of other Allowed Claims and the Claim of the Holder originally entitled to such Distribution shall be waived, discharged and forever barred without further order of the Bankruptcy Court.

*F. Allocations*

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest.

*G. Setoffs and Recoupment*

The Debtors or Liquidating Trustee may, but shall not be required to, setoff against or recoup from any Claim (for purposes of determining the Allowed amount of such Claim on which a distribution shall be made), any claims of any nature whatsoever that the Debtors or the Liquidating Trust may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Liquidating Trust of any such Claim the Debtors or the Liquidating Trust may have against the Holder of such Claim.

*H. Claims Paid or Payable by Third Parties*

*1. Claims Paid by Third Parties*

The Liquidating Trustee shall be authorized to reduce in full, or in part, as applicable, a Claim, and such Claim shall be disallowed without a Claim objection having to be Filed and without any further notice to or action, order or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment on account of such Claim from a party that is not a Debtor or the Liquidating Trustee.

## 2. Claims Payable by Third Parties

No distributions under this Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without a Claims objection having to be Filed and without any further notice to or action, order or approval of the Bankruptcy Court.

## 3. Applicability of Insurance Policies

Except as otherwise provided in this Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in this Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

# ARTICLE VII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

## A. *Allowance of Claims*

After the Effective Date, the Liquidating Trustee shall have and retain any and all rights and defenses that the Debtors had with respect to any Claim or Interest immediately before the Effective Date.

## B. *Claims Administration Responsibilities*

Except as otherwise specifically provided in this Plan, after the Effective Date, the Liquidating Trustee shall have the authority: (1) in consultation with the Liquidating Trust Oversight Committee, to File, withdraw or litigate to judgment objections to Claims or Interests; (2) to settle or compromise any Disputed Claim (other than a Fee Claim) without any further notice to or action, order or approval by the Bankruptcy Court, subject to the consent of the Liquidating Trust Oversight Committee in the event such settlement or compromise would result in an Allowed Claim in excess of \$200,000.00; and (3) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order or approval by the Bankruptcy Court.

## C. *Estimation of Claims*

Before or after the Effective Date, subject to the consent of the Committee or Liquidating Trust Oversight Committee, as applicable, the Debtors or Liquidating Trustee, as applicable, may (but are not required to) at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for

any reason, regardless of whether any party previously has objected to such Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim or Interest, including during the litigation of any objection to any Claim or Interest or during the appeal relating to such objection. Notwithstanding any provision otherwise in this Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim or Interest, that estimated amount shall constitute a maximum limitation on such Claim or Interest for all purposes under this Plan (including for purposes of distributions), and the Liquidating Trustee may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim or Interest.

*D. Reserve for Disputed Administrative Claims*

On and after the Effective Date, the Liquidating Trustee shall hold in the Disputed Claims Reserve, Cash in an aggregate amount sufficient to pay to each Holder of a Disputed Administrative, Priority Tax, Priority Non-Tax and Other Secured Claim, the amount of Cash that such Holder would have been entitled to receive under this Plan if such Claim had been an Allowed Claim on the Effective Date in an amount determined by the Liquidating Trustee in its reasonable discretion, with the consent of the Liquidating Trust Oversight Committee. For the avoidance of doubt, the amount reserved by the Liquidating Trustee pursuant to this Article VII.D shall not be deemed an admission as to the allowability or amount of any Claim in whole or in part.

*E. Fee Claim Reserve*

On and after the Effective Date, the Liquidating Trustee shall set aside and withhold from Distribution, Cash in an aggregate amount sufficient to pay all Fee Claims not paid as of the Effective Date, in an amount determined by the Liquidating Trustee in its reasonable discretion. For the avoidance of doubt, the amount reserved by the Liquidating Trustee pursuant to this Article VII.E shall not be deemed an admission as to the allowability or amount of any Claim in whole or in part.

*F. Adjustment to Claims Without Objection*

Any Claim or Interest that has been paid or satisfied, or any Claim or Interest that has been amended or superseded, cancelled or otherwise expunged (including pursuant to this Plan), may be adjusted or expunged (including on the Claims Register, to the extent applicable) by the Liquidating Trustee without a Claims objection having to be Filed and without any further notice to or action, order or approval of the Bankruptcy Court.

*G. Time to File Objections to Claims*

Any objections to Claims shall be Filed on or before the Claims Objection Deadline. Multiple extensions of the Claims Objection Deadline may be requested by the Liquidating Trustee upon Motion filed with the Bankruptcy Court.

*H. Disallowance of Claims*

Except as otherwise provided herein, any Claims held by Entities against which a Debtor or the Liquidating Trustee has Filed a complaint seeking to recover property under section 542, 543, 550 or 553 of the Bankruptcy Code to avoid a transfer under section 522(f), 522(h), 544, 545, 547, 548, 549 or 724(a) of the Bankruptcy Code, shall be deemed a Disputed Claim pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtors or the Liquidating Trust by that Entity have been turned over or paid to the Liquidating Trustee.

**EXCEPT AS PROVIDED HEREIN OR OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE CLAIMS BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS ON OR BEFORE THE CONFIRMATION DATE SUCH LATE CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.**

*I. Amendments to Claims*

On or after the Effective Date, except as otherwise provided herein or in a prior order of the Bankruptcy Court, a Claim may not be Filed or amended without the prior authorization of the Bankruptcy Court or the Liquidating Trustee. Absent such authorization, any new or amended Claim Filed shall be deemed disallowed in full and expunged without any further action.

*J. No Distributions Pending Allowance*

If an objection to a Claim or portion thereof is Filed as set forth in Article VII.B, no payment or distribution provided under this Plan shall be made on account of such Claim or portion thereof unless and until such Disputed Claim becomes an Allowed Claim.

*K. Distributions After Allowance*

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of this Plan. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim the distribution (if any) to which such Holder is then entitled under this Plan as of the Effective Date, without any interest to be paid on account of such Claim unless required under applicable bankruptcy law.

**ARTICLE VIII.**  
**SETTLEMENT, RELEASE, INJUNCTION AND RELATED PROVISIONS**

*A. Compromise and Settlement of Claims, Interests and Controversies*

Pursuant to sections 363 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions and other benefits provided pursuant to this Plan, the provisions of this Plan shall constitute a good faith compromise of all Claims, Interests and controversies relating to the contractual, legal and subordination rights that a Holder of a Claim may have with respect to any Allowed Claim or Interest or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates and Holders, and is fair, equitable and reasonable.

*B. Release of Liens*

Except as otherwise provided in this Plan or in any contract, instrument, release or other agreement or document created pursuant to this Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to this Plan and, in the Case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Estates shall be fully released as to the collateral, and all of the right, title and interest of any Holder of such mortgages, deeds of trust, Liens, pledges or other security interests shall revert to the Debtors, and their successors and assigns.

*C. Releases by the Debtors*

ON THE EFFECTIVE DATE OF THIS PLAN AND TO THE FULLEST EXTENT AUTHORIZED BY APPLICABLE LAW, THE RELEASED PARTIES WILL BE EXPRESSLY, UNCONDITIONALLY, GENERALLY AND INDIVIDUALLY AND COLLECTIVELY RELEASED, ACQUITTED AND DISCHARGED BY THE DEBTORS AND THEIR ESTATES FROM ANY AND ALL ACTIONS, CLAIMS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS ASSERTED ON BEHALF OF THE DEBTORS, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, MATURED OR UNMATURED, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, CONTRACT, TORT OR OTHERWISE, BY STATUTE OR OTHERWISE, THAT THE DEBTORS, THE LIQUIDATING TRUSTEE, THE DEBTORS' ESTATES OR THEIR AFFILIATES (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR ON BEHALF OF THE HOLDER OF ANY CLAIM OR INTEREST OR OTHER ENTITY, EVER HAD, NOW HAS OR HEREFTER CAN, SHALL OR MAY HAVE, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTORS, THE DEBTORS' LIQUIDATION, THE CHAPTER 11 CASES, THE PURCHASE, SALE OR RESCISSION OF THE PURCHASE OR SALE OF ANY SECURITY OF THE DEBTORS, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO,

ANY CLAIM OR INTEREST THAT IS TREATED IN THIS PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTORS AND ANY RELEASED PARTY, THE RESTRUCTURING OF CLAIMS AND INTERESTS BEFORE OR DURING THE CHAPTER 11 CASES, THE NEGOTIATION, FORMULATION OR PREPARATION OF THIS PLAN, THE PLAN SUPPLEMENT, THE DISCLOSURE STATEMENT OR RELATED AGREEMENTS, INSTRUMENTS OR OTHER DOCUMENTS OR ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT OR OTHER OCCURRENCE RELATING TO THE DEBTORS TAKING PLACE ON OR BEFORE THE CONFIRMATION DATE OF THIS PLAN, EXCEPT FOR ANY CLAIMS AND CAUSES OF ACTION FOR ACTUAL FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

*D. Releases by Holders*

ON THE EFFECTIVE DATE OF THIS PLAN AND TO THE FULLEST EXTENT AUTHORIZED BY APPLICABLE LAW, EACH HOLDER OF A CLAIM IN CLASSES 1 AND 2 AND EACH HOLDER OF CLAIMS IN CLASSES 3, 4 AND 5 THAT DOES NOT OPT OUT OF THE RELEASES PROVIDED FOR IN THIS ARTICLE VIII.D SHALL BE DEEMED TO HAVE EXPRESSLY, UNCONDITIONALLY, GENERALLY AND INDIVIDUALLY AND COLLECTIVELY, RELEASED AND ACQUITTED THE RELEASED PARTIES (INCLUDING THE RELEASED PARTIES PREDECESSORS, SUCCESSORS AND ASSIGNS, SUBSIDIARIES, AFFILIATES, MANAGED ACCOUNTS OR FUNDS, CURRENT AND FORMER OFFICERS, DIRECTORS, PRINCIPALS, SHAREHOLDERS, DIRECT AND INDIRECT EQUITY HOLDERS, MEMBERS, PARTNERS (GENERAL AND LIMITED), EMPLOYEES, AGENTS, ADVISORY BOARD MEMBERS, FINANCIAL ADVISORS, ATTORNEYS, ACCOUNTS, INVESTMENT BANKERS, CONSULTANTS, REPRESENTATIVES, MANAGEMENT COMPANIES, FUND ADVISORS AND OTHER PROFESSIONALS) AND THE RELEASED PARTIES FROM ANY AND ALL ACTIONS, CLAIMS, INTERESTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS ASSERTED ON BEHALF OF THE DEBTORS, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, MATURED OR UNMATURED, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY, CONTRACT, TORT OR OTHERWISE, THAT SUCH HOLDER (WHETHER INDIVIDUALLY OR COLLECTIVELY) EVER HAD, NOW HAS OR HEREAFTER CAN, SHALL OR MAY HAVE, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTORS, THE DEBTORS' LIQUIDATION, THE CHAPTER 11 CASES, THE PURCHASE, SALE OR RESCISSION OF THE PURCHASE OR SALE OF ANY SECURITY OF THE DEBTORS, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR INTEREST THAT IS TREATED IN THIS PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTORS AND ANY RELEASED PARTY, THE RESTRUCTURING OF CLAIMS AND INTERESTS BEFORE OR DURING THE CHAPTER 11 CASES, INCLUDING THE NEGOTIATION, FORMULATION OR PREPARATION OF THE PLAN SUPPORT AGREEMENT, THIS PLAN, THE DISCLOSURE STATEMENT, OR RELATED AGREEMENTS, INSTRUMENTS OR OTHER DOCUMENTS OR ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT OR OTHER OCCURRENCE RELATING TO THE DEBTORS TAKING PLACE ON OR BEFORE THE CONFIRMATION



DATE OF THIS PLAN, EXCEPT FOR (I) ANY CLAIMS AND CAUSES OF ACTION FOR ACTUAL FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AND (II) THE RIGHT TO RECEIVE DISTRIBUTIONS FROM THE DEBTORS AND THE LIQUIDATING TRUST ON ACCOUNT OF AN ALLOWED CLAIM AGAINST A DEBTOR PURSUANT TO THIS PLAN.

*E. Liabilities to, and Rights of, Governmental Units*

Nothing in this Plan or Confirmation Order shall discharge, release, or preclude: (1) any liability to a Governmental Unit that is not a Claim; (2) any Claim of a Governmental Unit arising on or after the Confirmation Date; (3) any liability to a Governmental Unit on the part of any Person or Entity other than the Debtors or Liquidating Trustee; (4) any valid right of setoff or recoupment by a Governmental Unit; or (5) any criminal liability. Nothing in this Plan or Confirmation Order shall enjoin or otherwise bar any Governmental Unit from asserting or enforcing, outside the Bankruptcy Court, any liability described in the preceding sentence. The discharge and injunction provisions contained in this Plan and Confirmation Order are not intended and shall not be construed to bar any Governmental Unit from, after the Confirmation Date, pursuing any police or regulatory action.

*F. Exculpation*

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS PLAN OR PLAN SUPPLEMENT, NO EXCULPATED PARTY SHALL HAVE OR INCUR, AND EACH EXCULPATED PARTY IS HEREBY RELEASED AND EXCULPATED FROM ANY EXCULPATED CLAIM OR LIABILITY FOR ANY EXCULPATED CLAIM, EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE DEBTORS AND THE COMMITTEE (AND THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, OFFICERS, EMPLOYEES, ADVISORS AND ATTORNEYS) HAVE PARTICIPATED IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE WITH REGARD TO THE SOLICITATION AND DISTRIBUTIONS PURSUANT TO THIS PLAN AND, THEREFORE, ARE NOT, AND ON ACCOUNT OF SUCH DISTRIBUTIONS SHALL NOT BE, LIABLE AT ANY TIME FOR THE VIOLATION OF ANY APPLICABLE LAW, RULE OR REGULATION GOVERNING THE SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THIS PLAN OR SUCH DISTRIBUTIONS MADE PURSUANT TO THIS PLAN.

*G. Injunction*

FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER, ANY CAUSE OF ACTION RELEASED OR TO BE RELEASED PURSUANT TO THIS PLAN OR THE CONFIRMATION ORDER.

FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT OF THE RELEASES AND EXCULPATION GRANTED IN ARTICLE VIII, THE DEBTORS AND HOLDERS OF CLAIMS OR INTERESTS SHALL BE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER AGAINST THE RELEASED

PARTIES AND THE EXCULPATED PARTIES AND THEIR ASSETS AND PROPERTIES, AS THE CASE MAY BE, ANY SUIT, ACTION OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, INTEREST OR REMEDY RELEASED OR TO BE RELEASED PURSUANT TO ARTICLE VIII.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS PLAN, THE PLAN SUPPLEMENT OR RELATED DOCUMENTS, OR IN OBLIGATIONS ISSUED PURSUANT TO THIS PLAN, ALL ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS OR INTERESTS THAT HAVE BEEN RELEASED OR DISCHARGED PURSUANT TO ARTICLE VIII.C OR ARTICLE VIII.D, OR ARE SUBJECT TO EXCULPATION PURSUANT TO ARTICLE VIII.F ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS: (1) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (2) ENFORCING, ATTACHING, COLLECTING OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (3) CREATING, PERFECTING OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH ENTITIES OR THE PROPERTY OR ESTATE OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; AND (4) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED OR SETTLED PURSUANT TO THIS PLAN.

THE RIGHTS AFFORDED IN THIS PLAN AND THE TREATMENT OF ALL CLAIMS AND INTERESTS HEREIN SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF CLAIMS AND INTERESTS OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE, AGAINST THE DEBTORS OR ANY OF THEIR ASSETS, PROPERTY OR ESTATES. ON THE EFFECTIVE DATE, ALL SUCH CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED AND THE INTERESTS SHALL BE CANCELLED.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN OR IN OBLIGATIONS ISSUED PURSUANT HERETO FROM AND AFTER THE EFFECTIVE DATE, ALL CLAIMS SHALL BE FULLY RELEASED, AND THE INTERESTS SHALL BE CANCELLED, AND THE DEBTORS' LIABILITY WITH RESPECT THERETO SHALL BE EXTINGUISHED COMPLETELY, INCLUDING ANY LIABILITY OF THE KIND SPECIFIED UNDER SECTION 502(G) OF THE BANKRUPTCY CODE.

ALL ENTITIES SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTORS, THE ESTATES, THE LIQUIDATING TRUSTEE, EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS AND EACH OF THEIR ASSETS AND PROPERTIES, ANY OTHER CLAIMS OR INTERESTS BASED UPON ANY DOCUMENTS,



INSTRUMENTS OR ANY ACT OR OMISSION, TRANSACTION OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE.

*H. No Discharge*

Notwithstanding any other provision of this Plan, pursuant to section 1141(d)(3) of the Bankruptcy Code, the Debtors shall not receive a discharge.

*I. Reservation of Causes of Action/Reservation of Rights*

Except with respect to the exculpation in Article VIII.F of this Plan and the releases in Article VIII.B of this Plan, nothing contained in this Plan shall be deemed to be a waiver or the relinquishment of any Causes of Action that the Debtors or the Liquidating Trust, as applicable, may have or may choose to assert against any Person.

In accordance with section 1123(b) of the Bankruptcy Code, and except where such Causes of Action have been expressly released in this Plan or the Global Settlement Agreement, the Liquidating Trustee shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in any supplemental documents, and the Liquidating Trustee's rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Liquidating Trustee may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Liquidating Trust Beneficiaries. No Entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or the Liquidating Trustee, as applicable, will not pursue any and all available Causes of Action against them. Except with respect to Causes of Action as to which the Debtors have released any Entity on or prior to the Effective Date in accordance with a Final Order of the Bankruptcy Court, the Debtors or the Liquidating Trustee, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Entity. Unless any Causes of Action against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan, Global Settlement Agreement or a Bankruptcy Court order, the Liquidating Trustee expressly reserves all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppels (judicial, equitable or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation of this Plan.

Without limiting the foregoing, and except where such Causes of Action have been expressly released in this Plan or the Global Settlement Agreement, the Liquidating Trustee may pursue (1) all Avoidance Actions including, without limitation, claims for the recovery of preferential transfers pursuant to sections 547 and 550 of the Bankruptcy Code, (2) actions to collect accounts receivable and any other amounts due to the Debtors' Estates, (3) tax refunds or other claims held by the Debtors' Estates, and (4) potential recoveries in connection with the Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, Case Number 05-MD-1720 (JG) (JO), pending in the United States District Court for the Eastern District of New York, in each case whether or not such payment, transfer, action or claim is specified in the Debtors' Schedules.

*J. Term of Injunctions or Stays*

Unless otherwise provided in this Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in this Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date. All injunctions or stays contained in this Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

**ARTICLE IX.  
CONDITIONS PRECEDENT TO CONFIRMATION  
AND CONSUMMATION OF THIS PLAN**

*A. Conditions Precedent to Confirmation*

It shall be a condition to Confirmation that all provisions, terms and conditions hereof are approved in the Confirmation Order.

*B. Conditions Precedent to the Effective Date*

It shall be a condition to the Effective Date of this Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.C hereof:

1. The Confirmation Order (a) shall have been duly entered and be a Final Order and (b) shall be in form and substance otherwise reasonably acceptable to the Committee.

2. Any amendments, modifications or supplements to this Plan (including the Plan Supplement), if any, shall be acceptable to the Committee.

3. All actions, documents, certificates and agreements necessary to implement this Plan shall have been effected or executed and delivered to the required parties and, to the extent required, Filed with the applicable Governmental Units in accordance with applicable laws.

4. The Confirmation Order shall, among other things, provide that all transfers of property by the Debtors (a) to the Liquidating Trust (i) are or shall be legal, valid, and effective transfers of property, (ii) vest or shall vest the Liquidating Trust with good title to such property free and clear of all liens, charges, claims, encumbrances or interests, except as expressly provided in the Plan or Confirmation Order, (iii) do not and shall not constitute voidable transfers under the Bankruptcy Code or under applicable non-bankruptcy law, (iv) shall be exempt from any transfer, sales, stamp or other similar tax (which exemption shall also apply to the transfers by the Liquidating Trust) and (v) do not and shall not subject the Liquidating Trustee or Holders of Claims to any liability by reason of such transfer under the Bankruptcy Code or under applicable non-bankruptcy law, including, without limitation, any laws affecting successor or transferee liability and (b) to Holders of Claims under the Plan are for good consideration and value.

5. All actions and transfers and all agreements, instruments, or other documents necessary to implement the terms and provisions of this Plan, including all transfers to the

Liquidating Trust, shall have been effected or executed and delivered, as applicable, in form and substance satisfactory to the Debtors and the Committee.

6. The Liquidating Trustee shall have been appointed and the Liquidating Trust Agreement shall have been executed.

7. The Debtors shall have completed all going out of business sales at the Debtors' business locations pursuant to the Store Closing Approval Order.

*C. Waiver of Conditions*

The conditions to Confirmation and to Consummation set forth in this Article IX may be waived by the Debtors, with the consent of the Committee, without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or consummate this Plan; *provided, however*, that the condition that the Debtors shall have completed all going out of business sales at the Debtors' business locations pursuant to the Store Closing Approval Order cannot be waived without the consent of the GOB Agent.

*D. Effect of Failure of Conditions*

If the Consummation of this Plan does not occur, this Plan shall be null and void in all respects and nothing contained in this Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims by the Debtors, any Holders or any other Entity; (2) prejudice in any manner the rights of the Debtors, any Holders or any other Entity; or (3) constitute an admission, acknowledgment, offer or undertaking by the Debtors, any Holders or any other Entity in any respect.

**ARTICLE X.  
MODIFICATION, REVOCATION OR WITHDRAWAL OF THIS PLAN**

*A. Modification and Amendments*

Except as otherwise specifically provided in this Plan, the Debtors, with the consent of the Committee, reserve the right to modify this Plan, whether such modification is material or immaterial, and seek Confirmation consistent with the Bankruptcy Code. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 (as well as those restrictions on modifications set forth in this Plan), the Debtors, with the consent of the Committee, expressly reserve their respective rights to revoke or withdraw, to alter, amend or modify this Plan with respect to any Debtor, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend or modify this Plan, or remedy any defect or omission or reconcile any inconsistencies in this Plan, the Disclosure Statement or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of this Plan.

*B. Effect of Confirmation on Modifications*

Entry of the Confirmation Order shall mean that all modifications or amendments to this Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

*C. Revocation or Withdrawal of Plan*

The Debtors, with the consent of the Committee, reserve the right to revoke or withdraw this Plan before the Confirmation Date and to file subsequent plans. If the Debtors, with the consent of the Committee, revoke or withdraw this Plan, or if Confirmation or Consummation does not occur, then, subject to the terms of the Global Settlement Agreement: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain of the Claims or Interests or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by this Plan, and any document or agreement executed pursuant to this Plan, shall be deemed null and void; and (3) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of such Debtor, any Holder or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by such Debtor, any holder or any other Entity.

## **ARTICLE XI. RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and this Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount or allowance of Claims or Interests;
2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals (including Fee Claims) authorized pursuant to the Bankruptcy Code or this Plan;
3. resolve any matters related to: (a) the assumption, assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine and, if necessary, liquidate, any Claims arising therefrom, including Cure Claims pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed or assumed and assigned; (c) the Liquidating Trustee amending, modifying or supplementing, after the Effective Date, pursuant to Article V, the Executory Contracts and Unexpired Leases to be assumed, assumed and assigned or rejected or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory, expired or terminated;

4. ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of this Plan;
5. adjudicate, decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;
6. adjudicate, decide or resolve any and all matters related to section 1141 of the Bankruptcy Code;
7. enter and implement such orders as may be necessary or appropriate to execute, implement or consummate the provisions of this Plan and all contracts, instruments, releases, indentures and other agreements or documents created in connection with this Plan, the Plan Supplement or the Disclosure Statement;
8. enter and enforce any order for the sale of property pursuant to sections 363, 1123 or 1146(a) of the Bankruptcy Code;
9. Adjudicate, decide, or resolve any and all matters related to Causes of Action, whether commenced before or after the Confirmation Date;
10. resolve any cases, controversies, suits, disputes or Causes of Action that may arise in connection with Consummation, including interpretation or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan;
11. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of this Plan;
12. resolve any cases, controversies, suits, disputes or Causes of Action with respect to the releases, injunctions and other provisions contained in Article VIII, and enter such orders as may be necessary or appropriate to implement such releases, injunctions and other provisions;
13. resolve any cases, controversies, suits, disputes or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim for amounts not timely repaid pursuant to Article VI.H.1;
14. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;
15. determine any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement or the Confirmation Order;
16. enter an order or final decree concluding or closing any of the Chapter 11 Cases;
17. adjudicate any and all disputes arising from or relating to distributions under this Plan;

18. consider any modifications of this Plan, to cure any defect or omission or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

19. determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;

20. hear and determine disputes arising in connection with the interpretation, implementation or enforcement of this Plan or the Confirmation Order, including disputes arising under agreements, documents or instruments executed in connection with this Plan;

21. hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

22. hear and determine all disputes involving the existence, nature, scope or enforcement of any exculpations, discharges, injunctions and releases granted in connection with and under this Plan, including under Article VIII;

23. enforce all orders previously entered by the Bankruptcy Court; and

24. hear any other matter not inconsistent with the Bankruptcy Code.

## **ARTICLE XII. MISCELLANEOUS PROVISIONS**

### **A. *Immediate Binding Effect***

Subject to Article IX.B and notwithstanding Bankruptcy Rules 3020(e), 6004(h) or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of this Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtors, the Liquidating Trustee and any and all Holders of Claims or Interests (irrespective of whether their Claims or Interests are deemed to have accepted this Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges and injunctions described in this Plan, each Entity acquiring property under this Plan and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

### **B. *Additional Documents***

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan, which agreements and other documents shall be in form and substance acceptable to the Committee. The Debtors or Liquidating Trustee, as applicable, and all Holders receiving distributions pursuant to this Plan and all other parties in interest may, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan.

*C. Dissolution of Statutory Committee*

On the Effective Date, the Committee shall be dissolved and members thereof shall be released and discharged from all rights and duties from or related to the Chapter 11 Cases.

*D. Reservation of Rights*

Except as expressly set forth in this Plan, this Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order, and the Confirmation Order shall have no force or effect if the Effective Date does not occur. None of the Filing of this Plan, any statement or provision contained in this Plan or the taking of any action by any Debtor with respect to this Plan, the Disclosure Statement or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders before the Effective Date.

*E. Successors and Assigns*

The rights, benefits and obligations of any Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiaries or guardian, if any, of each Entity.

*F. Notices*

To be effective, all notices, requests and demands to or upon the Debtors or the Liquidating Trustee shall be in writing. Unless otherwise expressly provided herein, any such notice, request or demand shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile or e-mail transmission, when received and confirmed, addressed to the following:

**If to the Debtors:**

Shearman & Sterling LLP  
599 Lexington Avenue  
New York, New York 10022  
Attention: Douglas P. Bartner and Jill Frizzley  
Facsimile: (646) 848-4000  
E-mail addresses: dbartner@shearman.com,  
jfrizzley@shearman.com

- and -

Young Conaway Stargatt & Taylor, LLP  
Rodney Square  
1000 North King Street  
Wilmington, Delaware 19801  
Attention: Pauline K. Morgan  
Facsimile: (302) 571-1253



E-mail address: pmorgan@ycst.com

**If to the Liquidating Trustee:**

As set forth in the Plan Supplement

After the Effective Date, the Liquidating Trustee may notify Entities entitled to receive documents pursuant to Bankruptcy Rule 2002 as of the Effective Date, that in order to continue to receive such documents, such Entities must File and serve on the Liquidating Trustee and its counsel a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Liquidating Trustee is authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have Filed such renewed requests.

*G. Entire Agreement*

Except as otherwise indicated, this Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings and representations on such subjects, all of which have become merged and integrated into this Plan; *provided, however*, that nothing in this Plan shall supersede the Agency Agreement or the Global Settlement Agreement.

*H. Exhibits*

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of this Plan as if set forth in full in this Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the website of the Debtors' notice, claims and balloting agent at <http://cases.primeclerk.com/coldwater> or the Bankruptcy Court's website at [www.deb.uscourts.gov](http://www.deb.uscourts.gov). To the extent any exhibit or document is inconsistent with the terms of this Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of this Plan shall control.

*I. Severability of Plan Provisions*

If, before Confirmation, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to this Plan and may not be deleted or modified



without the Debtors' and the Committee's consent; and (3) non-severable and mutually dependent.

*J. Votes Solicited in Good Faith*

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on this Plan in good faith and in compliance with the Bankruptcy Code and pursuant to section 1125(e) of the Bankruptcy Code.

*K. Conflicts*

Except as set forth in this Plan, to the extent that any provision of the Disclosure Statement, the Plan Supplement or any other order (other than the Confirmation Order) referenced in this Plan (or any exhibits, schedules, appendices, supplements or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of this Plan, this Plan shall govern and control. To the extent there are any inconsistencies between this Plan and the Confirmation Order, the Confirmation Order shall govern and control.

*[Remainder of page intentionally left blank.]*

Dated: September 15, 2014  
New York, New York

COLDWATER CREEK INC., on behalf of itself and  
each of the other Debtors

By: /s/ James A. Bell

Name: James A. Bell

Title: President and Interim CEO

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